TOWNSHIP OF CENTRE WELLINGTON INTEGRITY COMMISSIONER, GUY GIORNO

Citation: Re VanLeeuwen, 2021 ONMIC 13
Date: August 24, 2021

REPORT OF INQUIRY

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INQUIRY

1. On February 22, the Council of the Township of Centre Wellington, acting under clause 223.4(1)(a) of the *Municipal Act*, asked me whether to inquire into whether Councillor Steven VanLeeuwen had breached the Code of Conduct for Council Members and Members of Local Boards. The request was made following public announcement of Councillor VanLeeuwen's membership in the End the Lockdowns National Caucus.

2. The principal claim of Councillor VanLeeuwen and the End the Lockdowns National Caucus, to which he belongs, is that, "the lockdowns cause more harm than the virus and must be brought to an end." The central issue in this inquiry was whether, by making this statement and participating in the Caucus, Councillor VanLeeuwen breached the Code.

3. The relevant portion of subsection 223.4(1) of the *Municipal Act* states: "This section applies if the Commissioner conducts an inquiry under this Part, (a) in respect of a request made by council … about whether a member of council … has contravened the code of conduct applicable to the member." Upon receiving Council's request, I commenced an inquiry.

4. Council's request also mentioned the *Municipal Conflict of Interest Act*, but I determined that only the Code was the applicable to these facts, and I proceeded on that basis.[1]

SUMMARY

5. The removal of Councillor VanLeeuwen from the office of Deputy Mayor was a political decision that Council was entitled to make, and not a matter on which an Integrity Commissioner should comment. The only issue in this inquiry is whether Councillor VanLeeuwen contravened the Code of Conduct.

6. This inquiry has considered Councillor VanLeeuwen's participation in the End the Lockdowns National Caucus, including the communication issued by the Caucus. This inquiry has also considered Councillor VanLeeuwen's social media commentary until his removal from the office of Deputy Mayor.

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[1] Among my reasons for not considering the *Municipal Conflict of Interest Act*: The MCIA covers decision making, at a meeting, on a matter in which one has a pecuniary interest (section 5), and attempting to influence the decision or recommendation of a municipal officer or employee on a matter in which one has a pecuniary interest (section 5.2). There was no suggestion of any facts that might trigger the MCIA. Further, section 223.4.1 of the *Municipal Act* requires the applicant for an Integrity Commissioner's MCIA inquiry, to provide both a statutory declaration and reasons for believing that a contravention occurred. Given the wording of Council's resolution, clearly it had not decided to become a section 223.4.1 applicant.

7. I find as a fact that, with a few exceptions, the factual claims in Councillor VanLeeuwen's social media posts were accurate and not misleading. I find that the statements of opinion in his social media posts reflected views that he had a right to express and did not contravene the Code.

8. Most of the lockdown measures were enacted by the Province, partly by statute, but primarily in the form of Cabinet orders (Orders in Council) filed as Regulations. I proceeded on the basis that, by joining the End the Lockdowns National Caucus, Councillor VanLeeuwen was challenging the provincial measures.

9. "Lockdown" is not a static concept. The lockdowns imposed by the Province of Ontario were an evolving set of restrictions. The Province's principal lockdown instrument, Ontario Regulation 82/20, developed through 72 versions between March 24, 2020, and June 23, 2021 – a different version of restrictions every six days on average.

10. Nobody who provided evidence in the inquiry disputes the existence of adverse effects of provincial lockdown measures including, but not limited to, intimate partner violence, suicide, suicidal ideation and self-harm, child maltreatment, substance use and abuse, food insecurity, poverty, cancellation and delay of vital surgeries, job loss and additional economic impacts, and other results. The Premier of Ontario has called these outcomes "a massive cost to people and their lives." The issue is not whether adverse effects exist, but whether Councillor VanLeeuwen violated the Code when he said these adverse effects of the provincial lockdown measures exceed the harm caused by COVID.

11. I expressly asked the Province whether the claim of the End the Lockdowns National Caucus – that the lockdowns cause more harm than the virus – is factually incorrect. The Ontario Government responded to my information requests on June 2 and June 15, and detail of the provincial responses appears later in this report. Significantly, the Province "does not have an analysis of the economic impacts that can be specifically traced to COVID-19 restrictions. Other, non-economic, impacts on the citizens of Ontario may not be possible to quantify precisely."

12. By the Government's own admission, the effects of the lockdown measures are unquantified. Since the impacts are unmeasured, there is no evidentiary basis to prove or to disprove an assertion that "the lockdowns cause more harm than the virus."

13. Given the absence – an absence confirmed by the Province – of quantifiable measurement of adverse effects of the lockdowns, I find it impossible to treat "the lockdowns cause more harm than the virus" as a statement of fact. It is a statement of political opinion. In Canada we do not penalize elected representatives who hold political opinions, even political opinions out of step with the mainstream. This is particularly true in light of the guarantee of freedom of expression under the *Canadian Charter of Rights and Freedoms*.

14. Councillor VanLeeuwen points out that he has been up front about his beliefs, in contrast to federal and provincial politicians who promote restrictions for others that they do not observe themselves. For example, he commented on photographic evidence that Prime Minister Trudeau (who was not fully vaccinated at the time) and other G7 leaders disregarded physical distance in a social setting, after carefully spacing themselves for the official group portrait.[2] [3] This incident followed numerous examples, detailed at paragraphs 121 to 128, of federal and provincial politicians failing to practise the restrictions that they instruct ordinary people to follow. (To be clear, the inquiry found no evidence that any Centre Wellington officials said one thing and then did another.) Because federal and provincial leaders are not subject to municipal integrity commissioner inquiries, I cannot make a finding on Councillor VanLeeuwen's observation that is unfair to penalize honest opposition to pandemic restrictions when those who make and promote the restrictions contravene them with impunity.

[2] The G7 summit was held June 11-13. At the time, the official guidance from the Public Health Agency of Canada was that partly vaccinated individuals should wear masks and maintain physical distance in the presence of others, even outdoors. PHAC did not issue new guidance until June 25. According to the new guidance, at outdoor gatherings, individuals who are partly vaccinated (as Mr. Trudeau was at the time of the summit) should "For now, consider wearing a mask if physical distancing cannot be maintained" when they are "Outdoors with people from multiple households who are unvaccinated, partially vaccinated, or their vaccination status is unknown."

[3] In fairness, the official UK Government position is that the event complied with protocols because "there was social distancing" and "there have always been different principles for social entertainment or weddings than for government business."

15. Provincial decisions on lockdown measures are not based solely on the advice of public health experts and other medical experts. They reflect a variety of inputs, including medical-scientific expertise, public opinion polling, political considerations, and lobbying by lobbyists. Premier Ford said as much when he explained that in fashioning restrictions the Government was seeking a “happy balance.” Ultimately, the lockdown measures are subjective policy choices made by provincial politicians. In Canada we do not treat political decisions as inviolate, objective truths that cannot be criticized.

16. Almost never is there only one policy solution to a given problem. The fact that Ontario adopted 72 different versions of lockdown measures is ample evidence that there was more than one way to respond to the pandemic, and I find that the Code of Conduct must be interpreted in light of that reality. The Cabinet clearly was choosing from a range of options, and there is no basis to find that a politician who advocates an unchosen option should be penalized, or, to use a modern expression, cancelled. A municipal representative who happens to disagree with the subjective policy choice of provincial politicians does not contravene the Code of Conduct.

17. The Code of Conduct was adopted by Council under the *Municipal Act*, a statute of Ontario. In this Province, as across the entire country, our political system presumes that on any question there are different, legitimate positions. As examples, I note the constitutional role of the Official Opposition, and the Legislative Assembly’s motto, *audi alteram partem* (hear the other side). I am confident that the *Municipal Act* authority to

create codes of conduct was never meant to outlaw disagreement with decisions of the Provincial Cabinet.

18. Once political decision-making leads to the enactment of a law, that law should be obeyed. One may challenge a law through the constitutional, legal process. One may seek to alter a law through the democratic, political process. An elected representative should not, however, advocate law breaking. I find that Councillor VanLeeuwen did not urge anyone to break the law. His actions were limited to seeking to overturn the lockdown measures through constitutional, legal, democratic, and political processes.

19. I also find, based on the available evidence, that Councillor VanLeeuwen did not obstruct, interfere with, or attempt to influence the enforcement of the lockdown measures or other public health measures. (The Wellington County OPP Detachment, upon being asked to address any interference with law enforcement, declined to participate in this inquiry.)

20. Whether Councillor VanLeeuwen failed to obey the law in operating his own businesses or personally is a matter for law enforcement authorities, not an Integrity Commissioner operating under the Code of Conduct. I note, however, that his business was visited by inspectors on two occasions and no charges were laid.

21. Councillor VanLeeuwen and the End the Lockdowns National Caucus also claim that they, "desire to restore dignity and respect for all Canadians by safeguarding our representative democracy and its institutions, defending our Constitution, personal freedoms and responsibilities …" In this context, Councillor VanLeeuwen has commented on the Ontario Provincial Police decision to communicate new lockdown measures, as if they were already in effect, at a stage when they were merely political positions of the governing party. I find that the Councillor did not contravene the Code of Conduct by publicly defending constitutional values in the face of such an apparent departure from the rule of law.

22. I conclude that Councillor VanLeeuwen did not contravene the Code of Conduct.

BACKGROUND

23. Starting in September 2020, Deputy Mayor VanLeeuwen used his personal Facebook page to pose the occasional comment – usually by sharing a link to a news story or someone else's social media post – about the response to COVID-19. I consider those posts in more detail at paragraphs 201 through 237.

24. Councillor VanLeeuwen subsequently joined four other individuals as the inaugural members of the End the Lockdowns National Caucus, which describes itself as a "non-partisan group seeking to provide formal challenges to current COVID-19 policies with a

specific emphasis on ending government's use of province-wide lockdowns and stay-at-home orders."[4]

25. The formation of the End the Lockdowns National Caucus was announced February 4, through the issuance of the following public statement:[5]

> We are current and former elected representatives from municipal, provincial, and federal levels of government across Canada, unified in pursuit of the truth, and resolved to ensure there is open, honest, and public debate regarding the COVID-19 government response.
>
> After careful examination and scrutiny of mitigation measures undertaken by all levels of government, it is now evident that the lockdowns cause more harm than the virus and must be brought to an end.
>
> We devote our energy and efforts to the just and compassionate objective of reopening our businesses, schools, places of worship, recreational facilities, along with the full resumption and expansion of efficient medical services. We desire to restore dignity and respect for all Canadians by safeguarding our representative democracy and its institutions, defending our Constitution, personal freedoms and responsibilities, whilst implementing focused protection for the most vulnerable.
>
> We hereby voluntarily sign this agreement on the 2nd day of February, 2021.

26. I am treating the words of the End the Lockdowns National Caucus statement as if they are Councillor VanLeeuwen's own words, and I have considered the impact of those words on Councillor VanLeeuwen's obligations under the Code of Conduct.

27. The Caucus describes itself and its purpose as follows:[6]

> In response to the unprecedented mass violations of Canadian's Charter Rights from government across the country in response to the COVID19 pandemic, a group of current and former elected representatives have come together to form the End the Lockdowns National Caucus.
>
> The caucus is a non-partisan group seeking to provide formal challenges to current COVID19 policies with a specific emphasis on ending governments use of province-wide lockdowns and stay-at-home orders.
>
> All members of the caucus which includes Randy Hillier - MPP, Maxime Bernier - PPC Party Leader, Derek Sloan - MP, Daryl Herlick - Perth East Councillor, and Steve VanLeeuwen - Centre Wellington Councillor, signed the following statement as a means of establishing the caucus. The statement reads as follows:
>
> [then follows the statement reproduced at paragraph 25, above]

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4 https://www.libertycoalitioncanada.com/end-the-lockdown-caucus

5 The statement is posted online: https://www.libertycoalitioncanada.com/end-the-lockdown-caucus

6 *Ibid*.

28. I note and I have considered the fact that Councillor VanLeeuwen associates his membership in the End the Lockdowns National Caucus with his office as a Council Member of the Township of Centre Wellington.

29. The Caucus's announcement also states: "The caucus is open to all members, at any level, of representative government and others are encouraged to contact the caucus for more information."

30. The announcement was accompanied by an undated photograph of the inaugural members of the Caucus. From left to right, the photograph shows: Daryl Herlick, Township of East Perth Councillor (North Easthope); Hon. Maxime Bernier, Leader, People's Party of Canada; Randy Hillier, Ontario Member of Provincial Parliament (Independent, Lanark-Frontenac-Kingston); Derek Sloan, Member of Parliament (Independent, Hastings-Lennox and Addington); and Mr. VanLeeuwen, at that time the Deputy Mayor of Centre Wellington.

31. Shortly after joining the End the Lockdowns National Caucus, Deputy Mayor VanLeeuwen was interviewed by *Guelph Today*. The February 9 report of his interview reads, in part, as follows:

> In a phone interview, VanLeeuwen explained the goal of the group is to reopen the country while protecting vulnerable populations like seniors and those with pre-existing conditions from COVID.
>
> He said as time has gone on since the early days of the pandemic and as he's had more conversations with residents he wanted to speak out against the lockdown.
>
> "I would say the effects of the restrictions and the lockdowns seem to be becoming more harmful and demonstratively more harmful than the virus itself," VanLeeuwen said.

> "I think receiving and hearing cries from the people constantly and I'll say people of my riding and around, but I'm like 'Okay I just can't remain silent anymore.'"
>
> He noted he has also become concerned with a rise in mental health problems, divorce, drug use and financial difficulties based on what he's heard from people he's met.
>
> What started with five politicians has already grown in numbers, mostly with politicians from Ontario and Alberta.
>
> A press release from the group said they're looking to provide a formal challenge to current COVID policies.
>
> "We're starting with speaking up and also gathering other community leaders and other elected officials together so that we can speak with one voice," he said.
>
> "There will be further actions later on but at this point, you can see that there's many signatures and different petitions to get started on. We want the voice of the people to be heard."
>
> One petition has gathered nearly 20,000 signatures in less than a week.
>
> The province announced on Monday a gradual reopening of the province in certain areas but VanLeeuwen said this isn't going far enough and is unfair to certain regions.
>
> "The difficulty with it is, they also still continue to think that it's acceptable to lock them back down again if something happens," he said.
>
> "Public health is taking a one-leg approach to dealing with the virus and have really stated that any other symptom that comes out of this, or the effect of these lockdowns, doesn't matter."

32. I have quoted from the news report since Mr. VanLeeuwen's comments to *Guelph Today* form part of the allegation against him.

33. I find as a fact that Mr. VanLeeuwen's *Guelph Today* comments were primarily directed to Government of Ontario decisions and that the measures he criticized were primarily those imposed by the Province.

34. In response to the Deputy Mayor's decision to join the Caucus, Mayor Linton presented a report on to February 16 meeting of Council in Committee of the Whole, and recommended that Mr. VanLeeuwen be removed from the position of Deputy Mayor. According the report:

> The Township of Centre Wellington and County of Wellington have declared states of emergency due to the COVID-19 global pandemic. Both the Township and County of Wellington continue to take action and make decisions consistent with the advice received from our local health professionals, including, but not limited to, the Wellington-Dufferin-Guelph Public Health. During the current state of emergency, I feel it is essential the Mayor and Deputy Mayor are unified in promoting a consistent message to our community of following rules, like physically distancing and wearing

> masks, to ensure that we slow the spread of COVID, reduce the strain on our healthcare system and save lives.
>
> Councillor VanLeeuwen has joined the "End the Lockdown Caucus", an alliance that maintains the current COVID-19 pandemic restrictions violate the Charter of Rights and Freedoms. This group openly criticizes the Federal, Provincial, County and Township governments. In addition, Councillor VanLeeuwen has publicly criticized our approach of supporting the actions taken by Wellington-Dufferin-Guelph Public Health (Feb 9, Guelph Today); he has posting/sharing information with questionable accuracy; and he has defied current lockdown rules by participating in a photo op with this Caucus indoors without physical distancing and without masks.
>
> I believe during this state of emergency, it is essential the Mayor and Deputy Mayor are unified in promoting a consistent message to encourage our community to continue to follow Provincial government and public health rules and protocols. Since the Deputy Mayor is not directly elected by citizens, Council reserves the right to both appoint and remove.
>
> Given the aforementioned, I believe a new Deputy Mayor should be appointed by Council.

35. Mayor Linton began the February 16 discussion by noting the significance of the "declared state of emergency" and stating his view that the Township "cannot afford to have a Deputy Mayor using his title" to criticize public health officials, or to "post and share information with questionable accuracy."

36. Resident Matt Wood presented a Change.org petition, calling on the Township of Centre Wellington to "Keep Steve VanLeeuwen as Deputy Mayor." The petition read in full as follows:

> On Friday February 12, 2021 Mayor Kelly Linton announced that he will be bringing forward a motion at the next council meeting to remove Centre Wellington Councillor Steve VanLeeuwen as Deputy Mayor after VanLeeuwen joined the End The Lockdown Caucus.
>
> The caucus is a group of Canadian politicians opposed to the current Covid19 policies, which are in violation of the Charter of Rights and Freedoms. The group is advocating for "the just and compassionate objective of reopening our businesses, schools, places of worship, recreational facilities, along with the full resumption and expansion of efficient medical services", while also "implementing focused protection for the most vulnerable."
>
> We are a group of concerned Canadians who believe in free speech and DO NOT support Mayor Linton in his decision to punish and silence anyone that does not agree with his point of view. We are asking that Steve VanLeeuwen KEEP his position as Deputy Mayor.

37. The Committee of the Whole then proceeded to discuss Councillor VanLeeuwen's decision to join the End the Lockdowns National Caucus and debate what, if anything, Council should do in response. Eventually, the Committee of the Whole adopted a motion, moved by Councillor Kitras and seconded by Councillor Foster, to "defer a

decision on the position of the Deputy Mayor pending an investigation by the Integrity Commissioner into whether Councillor VanLeeuwen violated the Council Code of Conduct or any other legislation."

38. The Committee of the Whole report was considered at the February 22 meeting of Council.

39. When the Committee of the Whole recommendation to defer (pending an Integrity Commissioner investigation) a decision on removing Councillor VanLeeuwen as Deputy Mayor was put to a recorded vote, Council Members who voted were equally divided, with three on either side of the question, and Councillor VanLeeuwen not voting.[7] Under subsection 246(2) of the *Municipal Act*, the failure to vote is deemed to be a vote against the motion. As a result of Councillor VanLeeuwen's deemed negative vote, the motion to adopt the Committee of the Whole recommendation was defeated, 4-3.

40. Councillor Foster then moved, seconded by Councillor McElwain:

> THAT Council of the Township of Centre of Wellington remove Councillor VanLeeuwen as Deputy Mayor;
>
> AND THAT the Integrity Commissioner be requested to initiate an investigation on whether Councillor VanLeeuwen breached Council's Code of Conduct or the *Municipal Conflict of Interest Act*.

41. That motion carried 5-2, with Councillors Kitras and VanLeeuwen abstaining (counted as negative votes) and everyone else voting in favour.

PROCESS FOLLOWED

42. This report was delayed by my attempt to obtain information from the Government of Ontario. My first inquiry to the Province was made on March 27 and additional inquiries were made by letters on April 15 and April 28. While the Province was under no obligation to cooperate, provincial lockdown measures are central to this case, so I offered it an opportunity to participate.

43. The Government of Ontario replied to my April 15 and April 28 letters on June 2 and June 15, respectively.

44. Typically, in operating under the Code, I follow a process that ensures fairness to both the individual(s) bringing a Complaint and the Council Member responding to the

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[7] Councillors Foster, Kitras and McElwain voted in favour of the Committee of the Whole recommendation to defer a decision on the position of the Deputy Mayor pending an Integrity Commissioner investigation. Councillors Dunsmore and MacRae and Mayor Linton voted against. Councillor VanLeeuwen did not vote and was deemed to vote against.

Complaint. This process is based on the Complaint Protocol that was adopted by Council and is appended to the Code as sections 16 through 43.[8]

45. Inquiries typically involve Complainants and Respondents who take different, often opposing, positions on the central issues. Section 223.4 of the *Municipal Act* does not mandate an adversarial (that is, party A versus party B) process, and it is important to note that Integrity Commissioners merely investigate and then report findings and recommendations; they do not decide.[9] On the other hand, the Complaint Protocol adopted by Township Council (which is not dissimilar to the protocols and procedures of many other municipalities), bears some of the hallmarks of an adversarial proceeding. The Respondent in an inquiry is entitled to know the substance of the allegations, and to receive the opportunity to respond meaningfully.[10] In my experience, the presence of a Complainant helps to bring the allegations into focus.

46. In the absence of a Complainant, I had to consider whether Councillor VanLeeuwen's words and conduct might potentially have contravened the Code, and then to allow him to respond on specific points. As one part of that process, I used interviews of witnesses to identify potential areas of concern. While no one formally articulated the position that Councillor VanLeeuwen has contravened the Code, nobody who was interviewed agreed with the position of Councillor VanLeeuwen and the End the Lockdowns National Caucus that the lockdowns cause more harm than the virus.

47. Under the next heading, I have grouped various expressions of concern about (and lack of support for) the stance of Councillor VanLeeuwen and the End the Lockdowns National Caucus. These perspectives were shared by individuals who freely accepted my invitation to be interviewed. These individuals were witnesses. None is a Complainant in this proceeding. None bears the burden of proof or is required to establish anything. Except for the Council Members, none is even subject to Centre Wellington's Code of Conduct or to my jurisdiction as Integrity Commissioner.

48. Section 223.5 of the *Municipal Act* imposes a secrecy requirement on Integrity Commissioners and their delegates. Because of this requirement, I do not inform witnesses of whom I am investigating, or for what reason. I only communicate (through questions) as much information as is necessary to facilitate witness interviews. One common interview question related to the claim that, "it is now evident that the lockdowns cause more harm than the virus and must be brought to an end." Witnesses from the Township and County were generally already aware of Council's request that I conduct

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8 The Complaint Protocol is posted here: https://www.centrewellington.ca/en/township-services/resources/Documents/LegislativeServices/Final-Complaint-Protocols-adopted-January27-2020.pdf

9 Some municipalities have purported to delegate to Integrity Commissioners the authority to decide on penalties for breaches of codes of conduct. That is not the case here. Whether the *Municipal Act* permits such purported delegation is not relevant to this inquiry.

10 *Di Biase v. Vaughan (City)*, 2016 ONSC 5620 (CanLII), at paras. 146-149.

this inquiry, and many of them commented specifically on Councillor VanLeeuwen. The other witnesses spoke generally about lockdowns and the opposition to lockdowns.

49. I conducted some interviews directly. I issued a delegation under subsection 223.3(3) of the *Municipal Act* to a lawyer who works in my office, and he conducted other interviews.

50. In total, a dozen people were interviewed. Six interviews were of public health officials and representatives from civil society organizations with a direct role in providing public health and social services, or in advocating for health, equity, and justice outcomes, before, during, and after the pandemic.

51. I sought interviews of other important witnesses, as well. An Integrity Commissioner may exercise authority under section 33 of the *Public Inquiries Act* to issue a summons and to require a person to give evidence on oath or affirmation or to produce relevant documents.[11] I chose not to do so, on the basis that the exercise of subpoena power would be disproportionate to the subject matter of the inquiry. Having made this choice, I was unable to compel anyone's participation.

52. Inspector Paul Richardson, Detachment Commander, Wellington County OPP, was invited, but he declined to participate, claiming, "I truly do not have any information to offer that will aid in your inquiry."

53. My letter to the Detachment Commander had listed the following topics about which I hoped to interview him:

> The purpose of the requested interview would be to help me understand topics that include the following, all in relation to the COVID-19 pandemic: the role of the police in enforcing provincial and local orders related to the pandemic; **whether there has been actual or attempted interference with the independence of law enforcement by an elected official of the Township of Centre Wellington**; more generally, whether the comments and conduct of elected officials in Centre Wellington have had an impact (positive, negative or neutral) on the ability of the OPP to educate about, promote compliance with, and enforce, provincial and local COVID-19 orders; **whether any elected officials in Centre Wellington have failed to comply with COVID-19 orders**; and the nature of misinformation and its effect on enforcement in the response to the pandemic. [emphasis added]

54. Separately, I invited the Commissioner of the OPP, Thomas Carrique, to respond to the suggestion that the OPP had announced it was enforcing certain lockdown measures, prior to the making of the Order in Council giving effect to those measures. The Commissioner provided responsive information in writing.

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[11] *Municipal Act*, subs. 223.4(2).

55. I offered each Council Member the opportunity of an interview to share views on whether and how Councillor VanLeeuwen had contravened the Code of Conduct. Councillors Foster and McElwain were interviewed, and I received written comments from Councillor Kitras. Their positions are outlined below.

56. I interviewed Councillor VanLeeuwen twice. He received a meaningful and full opportunity to address whether he had contravened the Code of Conduct, including to address the specific issues covered in this report.

57. This report does not refer to every letter, email, and document that I received, but I have reviewed and taken into account all the documentary evidence. I have also carefully considered all the evidence provided by witnesses.

POSITIONS EXPRESSED

Concerns about Councillor VanLeeuwen's Comments and Actions

Members of Council

58. In a telephone interview, Councillor Foster expressed clear concern about Councillor VanLeeuwen's actions.

59. Councillor Foster stated that he had received reports from residents alleging that employees and patrons of Councillor VanLeeuwen's businesses were inside the building without masks, contrary to public health orders. He did not have particulars, but suggested that I may be able to determine whether the police or public health officials possessed incident reports, an avenue that I did, in fact, pursue.

60. Regarding the broader issue of Councillor VanLeeuwen joining the End the Lockdowns National Caucus, Councillor Foster distinguished between "fair debate" and "unacceptable debate." Specifically, he stated his view that "real public health experts" need to be able to speak freely in public meetings without having their expertise undermined by opinion "in the dark recesses of the Internet". He further stated that politicians have an "oath to uphold the laws of the land" and "if the public health officer makes a recommendation to wear masks and we pass a law saying people have to wear one, then we need to abide by that." He further specified that these "policy decisions need to be made by learned people", indicating that he does not include Councillor VanLeeuwen in the category.

61. He further stated that the photograph of Councillor VanLeeuwen and the other members of the End the Lockdowns National Caucus must have certainly violated one or

more public health orders regarding indoor gatherings and the wearing of masks and he asked me to investigate the circumstances surrounding that photo.

62. Councillor Foster also expressed concern about emails that Councillor VanLeeuwen sent to the rest of Council. On December 10, 2020, Councillor VanLeeuwen sent other Council Members a *Rebel News* article about RCMP action taken against a drive-in church service in Manitoba. The article included the following cover note from Councillor VanLeeuwen:

> Hi fellow Councillors.
>
> I wanted to pass this article along because sometimes we can imagine that certain things would never happen in our lifetime or under our watch and care of our community. This is no longer a "what if" situation and has become a reality in other areas in Canada.
>
> It is not my intention to express that this will happen in Centre Wellington but I am surprised that it is happening in Canada even while such respect and compromise is happening with residents towards the restrictions. I am amazed thus far at the respect of our police force in our community and have had many discussions with them over the last months. With the new restrictions coming into place let us all at least reflect on the fact that we should never be silent on certain things and request safeguards or exemptions from Public Health so that this can't happen here. I know we are limited in our control but we do and should care about all in our community and the virus is only one area of health that we should be concerned with.
>
> Yesterday I went through another scare, a second person I know and directly spoke with was very depressed. I have had adult men (middle age) from the community in actual tears speaking in ways that were indicators of suicidal thoughts. Myself and others did immediately take loving action for these residents and they are getting help but I am saddened by what I see happening in the community. It brings me to tears.
>
> Just so you are aware, these are not members of our church and they are reaching out to us as community leaders. I am sure we all have such stories of depression coming to us all.
>
> Please watch the video and consider. I know we do not all have to agree about things in life but we should strive to understand each other.

63. In subsequent emails, Councillor Foster pressed Councillor VanLeeuwen on whether he had any personal interactions with police and what the outcome of those interactions were.

64. Councillor VanLeeuwen replied by characterizing his communications with the police as “just friendly discussions” related to their enforcement approach, and noted that he believed that the police services were attempting to be respectful.

65. Councillor VanLeeuwen then replied, on December 12, with the following clarification email to all of Council:

> **December 12**
>
> Hi fellow Council members
>
> I have been pondering my email and may have had a statement in it the email that could cause confusion.
>
> I wrote that " I am amazed thus far at the respect of our police force in our community and have had many discussions with them over the last months." and I desire to clarify this statement.
>
> As many of you know my occupation, I need to be constantly diligent in regards to theft of recreational toys and such. This brings me in close contact with the police and they tell me many stories and such during these conversations. I am always thankful for their care in the community when I hear how they deal with the residents in all areas of life. They are indeed a blessing to our community.
>
> I was worried that somehow based on the article attached that a connection would be made by someone that my conversations with the police were in regards to the Churches in our area and their enforcement. At this time we have never had such conversations and thus I don't want any Councillors to panic. The police are professionals and know their job well based on what I have heard and seen, and that is working for the care of the community.
>
> Sorry if I caused any confusion with that statement and have a blessed weekend.

66. Councillor Foster concluded our interview by asking me to investigate Councillor VanLeeuwen's interaction with police and public health enforcement officers and to consider whether Councillor VanLeeuwen ever tried to obstruct or to undermine their efforts, given that he was on record acknowledging interactions with them

67. Councillor McElwain expressed concern that Councillor VanLeeuwen's primary interest was the church that he attended. Councillor McElwain felt that Councillor VanLeeuwen was using his title as Deputy Mayor and Councillor to generate publicity and to advance a position to end the lockdown in support of his church. In Councillor McElwain's view, this raised the question of whether Councillor VanLeeuwen was "improperly advancing a private interest" by advocating for the end of lockdowns in order to support his congregation.

68. Councillor Kitras provided relevant context of Councillor VanLeeuwen's December 10 email. Councillor Kitras informed me that, on December 11, he replied to Councillor VanLeeuwen's email of the previous day and warned about sending emails to a quorum of Council. He also cautioned against being seen to advocate that people ignore police and law enforcement.

69. On December 11, Councillor VanLeeuwen replied as follows to Councillor Kitras:

> I don't mean to call for anyone to be against the police in enforcement. I do understand your message to me though. Thanks.

70. On December 12, Councillor VanLeeuwen emailed the remaining Council Members to clarify that he was not advocating for opposition to the exercise of police law enforcement responsibilities.

71. According to Councillor Kitras, the December 12 clarification email demonstrated that Councillor VanLeeuwen never advocated disobedience of any federal, provincial or municipal law.

72. Councillor Kitras believes that Councillor VanLeeuwen did not harm the interests of the Township by joining the End the Lockdowns National Caucus. He also is concerned about weaponizing disagreement on matters of opinion and policy:

> I do not believe with the information that I know that he has harmed the interests of the Township. He has different opinions than the majority of Council, but I believe he has the right to express those opinions on the pandemic emergency and lockdown. I don't believe that the Deputy Mayor needs to agree with the Mayor on all issues. As far as I know he hasn't advocated being contrary in his role as Deputy Mayor. It is pure speculation to say if he were to be invited to an event that he would not wear the mask or do something contrary to the best interests of the Township. To my knowledge, he has not been invited to participate in public announcements regarding the lock down, mask mandates and I believe the Mayor knows him as a friend and would not ask him to do that.

73. Councillor Kitras conceded that the photograph of Councillor VanLeeuwen with other members of the End the Lockdowns National Caucus *might* have contravened one or more public health orders, but he declined to state a position without knowing details of the circumstances.

Medical Officer of Health for Wellington-Dufferin-Guelph

74. Dr. Nicola Mercer, Medical Officer of Health for Wellington-Dufferin-Guelph, greatly assisted the inquiry. She made her staff available, arranged for information to be provided, and personally participated in two interviews

75. I began my first interview with Dr. Mercer by asking whether she thought that Councillor VanLeeuwen and other members of the End the Lockdowns National Caucus were making it difficult for her or her agency employees and inspectors to do their job. She was adamant that they did. Further, Dr. Mercer experienced their comments and views as an attack on her personal credibility since she is the one who writes the orders and "cares very much that all [her] orders are evidence-based." She added that this makes her "ultimately responsible for how well we do in this pandemic."

76. Dr. Mercer acknowledged that the lockdown measures had other impacts, but strongly believed that the measures saved lives. As for other impacts, she described the

situation as a “story of two pandemics”: “Did they [the restrictions] work? Yes. Did they cause other harms? Yes.”

77. She strongly affirmed that the pandemic restrictions were proven to save lives in a pandemic that had already claimed many. For this reason, she felt that it was “inappropriate, disrespectful and hurtful” for a group like the End the Lockdowns National Caucus to state the harms associated with lockdowns outweighed the positive public health impacts.

78. Dr. Mercer acknowledged that individuals are certainly free to “question the evidence” that underlies certain public health decisions, but this cannot be treated as licence, as a public figure, to breach the “sacred trust by stating an opinion that you want to be true as fact.”

79. During her second interview, I invited Dr. Mercer to comment on the changing provincial pandemic-response (for example, the revision of Ontario Regulation 82/20, on average, at least weekly.) Dr. Mercer readily acknowledged that provincial measures changed frequently over the course of the pandemic and her view (which she was clear to state was only an opinion) was that provincial measures at any given time might have reflected the views of “whoever has the ear of the Premier.”

80. She made a point, however, of distinguishing criticism of the provincial selection of lockdown measures from criticism of lockdowns, generally. She was emphatic that while lockdowns are a blunt public policy instrument they are widely-accepted as being the most effective tool for reducing COVID-19 transmission. She stated that the End the Lockdowns National Caucus was criticizing not merely provincial choices in the design of lockdown measures, but lockdowns as a concept. She said this approach served to “criticize what public health experts are doing without offering solutions” and suggested that it reflected a form of “magical thinking.”

81. Dr. Mercer was invited to comment on the photograph of Councillor VanLeeuwen standing with other members of the End the Lockdowns National Caucus. She noted that the participants were standing shoulder to shoulder without wearing masks and, while she did not know the time or location of the photo, he expressed her view that if the photo had been taken recently in Ontario then the participants likely were violating one or more public health measures. In her words, it was “very troubling that they would flout it in a public way.”

Province of Ontario

82. As explained in the “Process Followed” section of this report, the Government of Ontario responded in writing to various questions that I posed. The responses included a

summary of the various orders made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, and the *Emergency Management and Civil Protection Act*.

83. The provincial responses emphasized that, "Since the start of the pandemic, the government's top priority has been and continues to be keeping Ontarians safe and healthy." According to the Province, "the health of the citizens of Ontario has been and remains the primary concern."

84. The key issue in this inquiry is whether the statement of Councillor VanLeeuwen and the End the Lockdowns National Caucus, that "the lockdowns cause more harm than the virus," is demonstrably false. Consequently, I asked the Government of Ontario whether and how it measures harms caused by the lockdown measures. My questions included the following:

1. Is "the lockdowns cause more harm than the virus" factually accurate?
2. In the event the inquiry is required to make a factual finding on whether "the lockdowns cause more harm than the virus" is false or true, would the Province be able to share factual information that would be relevant to such a finding?
3. The claim "the lockdowns cause more harm than the virus" evokes a comparison of the harms caused by the virus to the harms caused by the lockdowns. (Here the question deliberately uses, without endorsing or adopting, the wording of the statement.) Is the Province able to share data that would enable the inquiry to make the comparison evoked by this claim?
4. The previous section listed impacts, identified by witnesses, that this document has collectively labelled Other Impacts. During the pandemic, has the Province been measuring Other Impacts?
5. Is there a statistical comparison, between the tracking of COVID cases and fatalities and the tracking of Other Impacts, that disproves the claim, "the lockdowns cause more harm than the virus"?
6. A counter-suggestion is that "the lockdowns cause more harm than the virus" cannot be proved or disproved empirically and is, consequently, a matter of opinion. Could the Province please help the inquiry to evaluate this counter-suggestion? In other words, it there a response to the assertion that it is impossible to prove or disprove "the lockdowns cause more harm than the virus"

85. The reference to Other Impacts in question 4, above, was explained to include intimate partner violence, child abuse, elder abuse, suicide and suicidal ideation, addiction/substance abuse, other mental health issues, child hunger, poverty, and effects on physical health.

86. The Province did not specifically address whether "the lockdowns cause more harm than the virus" is a factually accurate statement.

87. It did provide a general answer that referred to modelling, and the experiences of other countries. The provincial response also talked about programs in place to address

some of the lockdown impacts, which is useful context but does not directly contradict the statement of Councillor VanLeeuwen and the End the Lockdowns National Caucus. According to the Government of Ontario:

> The experience of other jurisdictions where strong lockdowns have not occurred provides evidence of the significant harms associated with that approach, including India, Brazil, and the United States.
>
> In addition, modelling provides projections on different scenarios for Ontario that indicate loosened public health and workplace safety measures would result in more severe COVID-19 related outcomes. For example see slide 8 for an Update on COVID-19 Projections from the Ontario Science Advisory Table which outlines different trajectories of COVID-19 cases based on weak, moderate, and strong public health measures.
>
> In considering the modelling, and the positions asserted in the questions, it is important to note that there are significant "Other Impacts" likely associated with the increased morbidity and mortality as a result of COVID-19 in scenarios where public health and workplace safety measures are weaker.
>
> - For example, one study in the United States of America states: "The scale of COVID-19 mortality in the United States, including among prime-age adults, merits efforts to continuously track how many children are affected by parental death. Children who lose a parent are at elevated risk of traumatic grief, depression, poor educational outcomes, and unintentional death or suicide, and these consequences can into adulthood. Sudden parental death, such as that occurring owing to COVID-19, can be particularly traumatizing for children and leave families ill prepared to navigate its consequences. Moreover, COVID-19 losses are occurring at a time of social isolation, institutional strain, and economic hardship, potentially leaving bereaved children without the supports they need."
>
> The Ministry of Health and its partners such as Public Health Ontario have been monitoring the impacts of disproportionate harms that may be caused either directly or indirectly by the pandemic.
>
> See PHO reports that may be helpful:
> https://www.publichealthontario.ca/-/media/documents/ncov/cong/2020/06/covid-19-negativeimpacts-public-health-pandemic-families.pdf?la=en
> https://www.publichealthontario.ca/-/media/documents/ncov/he/2021/01/rapid-review-negimpacts-children-youth-families.pdf?la=en
>
> The government recognizes that public health and workplace safety measures enacted during the pandemic have had impacts on the population and it has taken action to mitigate these impacts, including but not limited to:
>
> - To ensure continued access to mental health and addiction support services, the government has embedded requirements in the Stay-At-Home Order and Reopening of Ontario Act [*sic*] (ROA), and associated regulations, to ensure services remain in place with some modifications in order to minimize the risk of transmission.
>   - According to the Stay-At-Home Order, people are allowed to leave their home for permitted reasons under the Order, which include assisting others,

for health and safety purposes, and to seek mental health and addictions services.
    - According to the ROA regulations (see above), organizations that provide health care including retirement homes, hospitals, clinics, long-term care facilities, independent health facilities and mental health and addictions counselling supports are permitted to open during the Emergency Brake. In addition, places that are otherwise closed such as meeting and event spaces, facilities for indoor or outdoor sports and recreational fitness activities and public libraries are permitted to open for the purposes of delivering mental health and addiction support services.
- Additional government programs and funding have been put in place, which include (but are not limited to):
    - Ontario Unveils $2 Billion Plan to Keep Schools Safe and Support Learning Recovery and Renewal | Ontario Newsroom
    - Ontario to Introduce Paid COVID-19 Leave | Ontario Newsroom
    - Ontario Continues To Support Businesses, Workers and Families during the COVID19 Pandemic | Ontario Newsroom
    - Ontario Adding More Mental Health Beds and Programs for Seniors | Ontario Newsroom
    - Ontario Increases Mental Health Funding for Postsecondary Students | Ontario Newsroom
    - Ontario Helping Keep Seniors Safe and Connected During COVID-19 | Ontario Newsroom
    - Ontario Supporting COVID-19 Response in High Priority Communities | Ontario Newsroom
    - Ontario Keeping Seniors Safe and Socially Connected during COVID-19 | Ontario Newsroom
    - Ontario Supports Expanding Virtual Mental Health Services for Youth | Ontario Newsroom
    - Province Doubles Support for Parents With New Ontario COVID-19 Child Benefit | Ontario Newsroom

88. While the above response does not specifically address the accuracy or inaccuracy of the claim that "the lockdowns cause more harm than the virus," the two Public Health Ontario reports referenced in the response contain additional information on impacts, albeit based on literature reviews. According to the January 11, 2021, update from Public Health Ontario:

> **Key Findings**
>
> - Children's mental health and behaviour have been overall negatively impacted by the COVID-19 public health measures. Young children and adolescents were affected differently. Parents of young children reported more behavioural difficulties, hyperactivity, and conduct problems, while adolescents were more likely to have increased anxiety and depressive symptoms, increased suicidal ideation, and increased frequency of alcohol consumption for those reporting any use.

- Parental stress was a mediator in the association between exposure to COVID-19 public health measures and negative child outcomes. The level of parents' perceived stress due to the COVID19 pandemic may exacerbate or buffer mental health and behaviour problems in children.
- Other child outcomes negatively impacted by the pandemic included movement behaviours (decreased physical activity, increased sedentary behaviour and screen time), increased food insecurity, negative educational outcomes, increased injuries occurring at home, and increased reports of child maltreatment.
- Health service utilization of tertiary care services (emergency department visits and hospitalizations) decreased substantially during the early months of the pandemic. However, it was reported that illness severity increased, and visits for mental health reasons increased in the later weeks of the pandemic. There may have been some parents delaying care for their children due to fear of acquiring COVID-19 infection in the hospital.
- Although this review identified many relevant studies, most were convenience samples. As such, families from diverse ethnicities or racialized communities, who are more likely to experience greater social and health inequities which may be exacerbated during the pandemic, are systematically underrepresented.

[emphasis added]

89. The Public Health Ontario report, to which the Government directed me, also states:

> The effects on children, adolescents, and families are particularly concerning as school closures during the spring of 2020 were the longest in modern history. Additionally, the potential negative outcomes including educational loss, increased risk of child maltreatment, and mental health conditions in the critical years of childhood may lead to irreversible effects for this generation of children.

90. The areas of impact covered by the report include: anxiety, depressive symptoms, PTSS, and general mental health outcomes; child behaviour; suicide, suicidal ideation, and self-harm; child maltreatment; substance use; parenting, parental stress, and parent mental health and wellbeing; nutrition and food insecurity; movement behaviours (physical activity, sedentary behaviour, screen time, sleep); education; injury; pediatric emergency department visits and hospitalizations; and access to health and community services.

91. The report concludes:

> The magnitude and number of negative impacts appears to be increasing as well. The stay-at home orders and school closures enacted in response to COVID-19 are unprecedented in their breadth and duration and this presents a risk to children and families for various physical and mental health problems.

92. I emphasize that this is a provincial government report, to which the provincial government referred me when I asked for factual information to address the claim that "lockdowns cause more harm than the virus." The report identifies numerous impacts of the lockdown restrictions. It neither refutes not confirms the thesis of the End the Lockdowns National Caucus.

93. The Province of Ontario subsequently sent a second set of responses to additional questions. Economic impacts were a significant focus of my further questions. Two of the Province's answers addressed economic effects of the lockdown:

> The pandemic has had a negative impact on the economy of Ontario and the employment prospects of its citizens. The latest Ontario Economic Accounts for the October-December 2020 quarter are published here: https://www.fin.gov.on.ca/en/economy/ecaccts/. Likewise, the latest Ontario Employment Report is available here: https://www.ontario.ca/document/ontario-employment-reports/january-march-2021.
>
> These reports provide insight into the economic impact of COVID-19, but do not specifically quantify the economic impact of the COVID-19 lockdowns. Ontario has not performed any analysis to separate the impact of lockdowns from the other factors influencing the economy during the pandemic.

and:

> Ontario recognizes the costs of COVID-19 restrictions to the citizens of Ontario that cannot be quantified in economic terms, including the impact the COVID-19 restrictions have had on interpersonal relationships and everyday life. As mentioned above, Ontario does not have an analysis of the economic impacts that can be specifically traced to COVID-19 restrictions. Other, non-economic, impacts on the citizens of Ontario may not be possible to quantify precisely. This, however, does not make any of these impacts less factual or real.
>
> [emphasis added]

94. My questions to the Province made specific reference to Premier Ford's repeated references to a "happy balance"[12,13,14] and to "balancing Ontarians' health & the economy."[15] I also referenced the Premier's acknowledgement that, "every public health

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[12] Hon. Doug Ford, October 30, 2020: "So there's a happy balance and we'll find that happy balance with our health team." Audio clip online: https://www.98thebeach.ca/2020/10/30/ford-requests-plan-to-ease-hotspot-restrictions/

[13] Hon. Doug Ford, quoted by CBC News, November 2, 2020: "I listen to the health [experts], I listen to the folks who have small businesses, and there has to be a happy balance."

[14] Hon. Doug Ford, quoted by Canadian Press, November 24, 2020: "We're trying to doing [*sic*] a happy balance. We have to keep the economy moving and protect the health and well-being of everybody in this province."

[15] Twitter, @fordnation, October 27, 2020, 3:42 p.m.: "We are there for our businesses & those who work there. I'm trying to navigate right down the middle; balancing Ontarians' health & the economy. We have to have a happy balance, and it's not easy. We'll get through this together & our economy will come back stronger than ever."

measure we have left, comes with a massive cost to people and their lives."[16] [emphasis added] The above responses were provided to address my questions.

95. I find that the Government of Ontario responses dispose of the central issue in this inquiry. The provincial government, which has enacted most of the lockdown restrictions, has not measured the lockdown impacts, whether economic or non-economic. Consequently, not even the Province is able to establish that "lockdowns cause more harm than the virus" is a false statement.

96. The second set of provincial responses also addressed my questions about the sources of input into government decision-making. I had specifically asked about the government taking into account not just public health advice but also political considerations and public policy considerations other than public health. I also referred to lobbying by business interests. The Government acknowledged that it considered a "range of perspectives" when developing the lockdown measures:

> Cabinet determines the public health measures that apply to the businesses and organizations subject to Regulation 82/20. As with all government decisions, the regulations reflect policy choices that are informed by the advice and recommendations of experts and advisors, including public health advice from the Science Table and the Office of the CMOH. Ministers do hear from and consider the range of perspectives of constituents and stakeholders. Ultimately, Cabinet relies on the perspectives and input from each of its members in arriving at a consensus decision…
>
> …
>
> While the health of the citizens of Ontario has been and remains the primary concern, the government is also cognizant of the impact of restrictions on businesses, employees, and students in Ontario, and has endeavoured to strike the right balancing of allowing businesses, schools, and other organizations to operate to the extent that can be justified from the perspective of public health.

97. Councillor VanLeeuwen has argued that the absence of lockdown debate at the provincial level is one reason why he, as a municipal councillor, felt compelled to speak up. I asked the Government of Ontario about the assertion that it has discouraged public debate on the impacts (positive and negative) of the pandemic restrictions. Two of its responses addressed this issue:

> In a free and democratic society like Ontario, the government values public debate on its policies. Ontario rejects the characterization that it has discouraged public debate on the shape of its pandemic response or the specifics of the COVID-19 regulations.

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[16] Hon. Doug Ford, news conference, April 17, 2021, transcript online: https://www.rev.com/blog/transcripts/doug-ford-press-conference-ontario-ca-covid-19-stay-at-home-orders-transcript-april-16

> The government has welcomed the input of experts from outside the government in its decisionmaking response to the COVID-19 emergency, including the establishment of bodies such as the Science Table. The government has also been transparent in publicizing the information Cabinet has relied on in making decisions, including the recommendations of the Science Table. Government decisions are further scrutinized by the legislature, including the frequent reporting by the Solicitor General in Committee, as well as the report required by the EMCPA within 120 days after a provincial emergency ends, which was tabled in the legislature on November 2, 2020.

and:

> As with all public decisions, Ontario has welcomed input from a wide variety of stakeholders. Public debate on the scope of pandemic restrictions has taken place in a number of forums, from the Legislature to the variety of expert Tables that have been incorporated into the COVID-19 response structure.

98. The Province's statement that "public debate on the scope of pandemic restrictions has taken place in a number of forums [including] the Legislature" needs to be understood in the context of what happens to MPPs who argued to limit the scope of pandemic restrictions. As detailed at paragraphs 203 through 205 and paragraphs 235 to 236 of this report, the Premier kicked York Centre MPP Roman Baber out of the governing party's legislative caucus, and subsequently one of his Ministers introduced a motion to slash Mr. Baber's salary.

Expert Stakeholders

99. The inquiry included interviews with experts from health and social services organizations that provide and fund crucial front-line services. These included the Assaulted Women's Helpline, the Canadian Mental Health Association Waterloo Wellington, and the Canadian Women's Foundation.

100. To be clear, none of these experts espouses the position that lockdowns cause more harm than the virus. The stakeholders support the public health measures, and emphatically do not welcome the exploitation of their issues and causes by anti-lockdown activists. Nonetheless, the experts did provide evidence of the impacts that are being felt.

101. During a telephone interview, Yvonne Harding, Manager of Resource Development of the Assaulted Women's Helpline, provided several alarming statistics. The number of domestic violence calls to the Helpline increased to 55,000 between March and September 2020 alone (up from approximately 4000 in the previous year). There has been an observable uptick in the number of calls from both repeat and first-time callers. Helpline workers reported a significant increase in the number of women calling for the first time, despite experiencing domestic violence in the past, because they were now concerned for the physical safety of children who were not previously targets of violence.

There has also been a near four-fold increase in the number of calls to their seniors' helpline. Many seniors report fear of isolation and health effects of the pandemic and the attendant lockdowns, including worries about hospital capacity and limited access to life-saving medication.

102. Ms Harding confirmed that governments are making efforts to consult with and listen to the social services sector. In her view, the needs of organizations like the Assaulted Women's Helpline are being heard and the lines of communication with public health officials at all levels remain open.

103. At the same time, she hoped that public discussion precipitated by the COVID-19 pandemic might lead to a major overhaul of the amount and nature of support available to individuals in mental and/or physical crisis.

104. Ms Harding stressed that lockdown measures do not cause intimate partner and family violence:

> The biggest thing for us is to reinforce in public discussion that lockdown and shutdown measures are not the cause or source of domestic violence. It was there. This has bubbled up and captured attention about how challenging isolation can be for these women. Many of these women were isolated before, and now the public is beginning to understand what that isolation feels like. [emphasis added]

105. Helen Fishburn, Executive Director of Canadian Mental Health Association Waterloo Wellington, spoke of the CMHA's recent campaign, "Everything Is Not OK," which was meant to draw attention to the fact that pandemic has resulted in a substantial increase in the level of diagnosable mental health conditions, including high rates of episodic mental health conditions. It was this campaign that led me to contact Ms Fishburn in the first place.

106. Ms Fishburn explained that the pandemic has revealed that we need to talk about mental health issues in the same way we discuss other diagnosable health conditions. She advocates establishing a system of wrap-around support services for individuals with mental health conditions, citing Cancer Care Ontario (now part of Ontario Health) as a model

107. She acknowledged that lockdown measures do have a role in the deterioration of mental health, due to the distress the measures cause. However, Ms Fishburn emphasized that these impacts must be understood within the larger context of the pandemic. She says COVID-19 is the root cause of the problem. In her words, "COVID-19 spreading like wildfire is an even greater source of both physical and mental health issues" than the pandemic restrictions.

108. Ms Fishburn added that the emergence of new variants is a further source of mental distress and, as a result, it is now more important than ever to follow public health guidance and orders.

109. Karen Campbell, Director, Community Initiatives & Policy, for the Canadian Women's Foundation, provided information about about the economic, social and health effects on women as a result of the pandemic.

110. She pointed to a recent RBC report that finds the pandemic is having a significant and disproportionate impact on women in the workforce. Significant burnout has led to record levels of women dropping out of the labour force. According to Ms Campbell, economic indicators suggest that the pandemic threatens to roll back nearly three decades of women's economic progress.

111. When asked specifically what role lockdowns may play in gender-based violence, Ms Campbell stressed that lockdowns are not a "cause" of gender-based violence, but certainly exacerbate violent behaviour or tendencies. She said that a root-cause analysis would treat lockdown measures as a contextual factor, rather than a cause.

112. Further, her view is that COVID-19 and gender-based violence are both public health concerns and both need to be addressed. This is not a simple "balancing" exercise. Ms Campbell said each must be treated with the policy tools that are proven to work: COVID-19 must be reduced through lockdowns and stay-at-home orders and gender-based violence must be reduced through education, outreach and an array of social and economic supports (many of which are chronically underfunded).

113. When asked specifically about the arguments of groups like the End the Lockdowns National Caucus that lockdown measures exacerbate negative social consequences, her reply was clear and emphatic:

> Advancing gender-based violence arguments as … anti-lockdown rhetoric is an absolute non-starter, and will not find any support from the women's sector in Canada.

114. I thank these experts for their contributions to the inquiry.

Position of Councillor VanLeeuwen

115. Councillor VanLeeuwen began our initial interview by standing by the concerns he expressed to Council during debate during the February meetings:

> We as Council have been excluded from a conversation about the very serious consequences of public health measures like lockdowns. Our role as councillors is to make bylaws, but also to represent our constituents and raise concerns when they ask us to. We must be able to speak publicly about those concerns.

116. He stated that the representative role of elected officials is all the more important at the municipal level, since municipal government is closest to the day-to-day lives and concerns of ordinary people. He says this makes him particularly sensitive to what the grassroots are saying, and while he certainly does not wish to override the Province, he believes this is a reason that municipal leadership must "have a role in that conversation."

117. This does not mean, however, that he was counselling people to break the law:

> I view my role as being different from the others. I am supposed to listen to people, then stand up for those people. In the meantime, they want to engage with me. … I am not telling people to rebel or ignore orders. I am saying I want to have that conversation and I'm willing to stand for you.

118. Councillor VanLeeuwen believed that governments are collecting data, statistics, and other information on the effects of the pandemic and public health orders, but do not communicate the impacts so municipal leaders and the public can discern whether the policies are working and whether the benefits outweigh the negative effects, such as increased numbers of suicides, or deferred medical treatments. In fact, as discussed earlier, this inquiry has found that the Province is not able to quantify the economic and non-economic impacts of its lockdown measures.

119. I asked Councillor VanLeeuwen about the photograph of him and other members of the End the Lockdowns National Caucus. He stated that he did not record the date of his meeting with the other Caucus members or the exact location where it was held. Asked why he posed for the photo, Councillor VanLeeuwen stated that someone taking a position must also be prepared to defend that position: "I need to stand behind what I say. You can't lead from a closet and that photo was part of the message." Other than that, he said that the photo speaks for itself.

120. Councillor VanLeeuwen later pointed out that he has been up front about his beliefs, in contrast to federal and provincial politicians who promote restrictions for others that they do not observe themselves. For example, he commented on photographic evidence that Prime Minister Trudeau (who was not fully vaccinated at the time) and other G7 leaders disregarded physical distance in a social setting, after carefully spacing themselves for the official group photograph.[17]

121. The G7 incident followed numerous instances of federal and provincial officials failing to practise the restrictions that they instruct ordinary people to follow.

122. Prime Minister Trudeau crossed a provincial border to spend Easter 2020 at his secondary residence, after telling ordinary Canadians to stay home.[18]

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[17] See notes 2 and 3.

[18] Amanda Connolly, Global News, "Trudeau under fire for Easter trip despite urging Canadians to 'sacrifice' plans" (April 14, 2020), online: https://globalnews.ca/news/6815936/coronavirus-justin-trudeau-andrew-scheer-easter-travel/

123. Premier Doug Ford visited his cottage over the 2020 Easter weekend, after telling ordinary Ontarians not to do so. The public was not informed until four weeks after the fact.[19]

124. Federal Health Minister Patty Hadju made 11 trips back to her home in Thunder Bay during the height of the pandemic, including on Easter Weekend, after telling ordinary people Easter "is not the time for gatherings with family and friends." The full extent of the travel was not revealed for nearly six months.[20]

125. Premier Ford celebrated Mother's Day 2020 with two adult daughters who live in different households, contrary to the advice given to ordinary Ontarians.[21]

126. In August 2020, Premier Ford and members of his Cabinet attended an MPP's wedding where most guests were photographed maskless, around the same time that the provincial government was calling for a crackdown on large social gatherings.[22] (The official Government position is that no rules were broken. [23])

127. Another provincial premier apologized for a maskless, non-distanced dinner party with cabinet ministers.[24]

128. The mayor of a major city apologized for failing to wear a mask and observe adequate distancing.[25]

129. In fairness, the inquiry found no evidence that any Centre Wellington politicians said one thing and did another.

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[19] Adam Carter, CBC News, "Ontario Premier Doug Ford briefly visited cottage after asking residents not to" (May 8, 2020), online: https://www.cbc.ca/news/canada/toronto/ford-cottage-covid-19-coronavirus-1.5561167

[20] Brian Lilley, *Toronto Sun*, "Trudeau health minister flew friendly skies more than thought during COVID lockdown" (November 19, 2020), online: https://torontosun.com/news/national/trudeau-health-minister-flew-friendly-skies-more-than-thought-during-covid-lockdown

[21] Shanifa Nasser, CBC News, "Doug Ford admits daughters visited his home on the weekend, contrary to Ontario's COVID-19 rules" (May 11, 2020), online: https://www.cbc.ca/news/canada/toronto/ford-physical-distancing-daughters-1.5564756

[22] Fil Martino and Caryn Ceolin, CityNews, "Ford, under fire for attending wedding, wants police to crack down on prohibited parties" (September 8, 2020), online: https://toronto.citynews.ca/2020/09/08/ford-under-fire-for-attending-wedding-wants-police-to-crack-down-on-prohibited-parties/

[23] Abby Neufeld, Narcity, "Ford Insists Nobody Broke Any Rules At that Wedding He Went To Last Month (PHOTO)" (September 16, 2020), online: https://www.narcity.com/toronto/doug-ford-wedding-photo-doesnt-show-any-rules-being-broken-insists-premier

[24] Emily Mertz, Global News, "'I regret that': Kenney apologizes for Sky Palace dinner that broke COVID-19 rules" (June 7, 2021), https://globalnews.ca/news/7927987/kenney-sky-palace-dinner-apology-covid-19/

[25] Premila D'Sa, *Huffington Post*, "Toronto Mayor John Tory Apologizes For Not Wearing His Mask Properly: He was spotted talking to people at Trinity Bellwoods Park" (May 24, 2020), online: https://www.huffingtonpost.ca/entry/john-tory-toronto-mask-coronavirus_ca_5ecb202fc5b6f6ac2c62b3a2

130. Councillor VanLeeuwen's position is that he has been open and transparent about his opposition to lockdown measures, in contrast to politicians who promote pandemic restrictions for ordinary people and then fail to practise them personally.

131. The Councillor was asked about his December 2020 emails to other Council members, including his email to Councillor Foster about possible interactions with police or public health officials. He said that he was puzzled by Councillor Foster's questioning, since he felt his initial email never suggested that he was advocating for individuals to ignore public health orders or guidance, and was instead intended to begin a conversation about what should be matters of public importance to Council.

132. Councillor VanLeeuwen said he sent a clarification email on December 12 because the response from Councillor Foster made him think his initial email might be subject to misinterpretation.

133. Asked what he meant by the email reference to "just friendly discussions" with the police about enforcement, Councillor VanLeeuwen said that he had one, casual interaction with a police constable who, on an unrelated traffic matter, happened to be outside Councillor VanLeeuwen's business. According to the Councillor, this was merely a friendly chat about how members of the OPP were doing during the difficult situation caused by the pandemic.

134. In a subsequent interview, Councillor VanLeeuwen was invited to comment on two visits to his business by public health inspectors. (Wellington-Dufferin-Guelph Public Health assisted the inquiry by responding to my request for any inspection or incident reports involving Councillor VanLeeuwen or his businesses. I received two reports, arising from July 25, 2020, and January 29, 2021, visits by WDG Public Health inspectors in response to calls about potential violations of Dr. Mercer's Face Coverings Section 22 Class Order[26] made under the *Health Protection and Promotion Act*. The July 25 report noted that "all staff claim medical exemption" and "no further action" was taken, with the resolution recorded as, "Information Provided." The January 29 report indicates the resolution as "Resolved.")

135. Councillor VanLeeuwen confirmed his awareness of the inspections but stated he was not present during either one. Asked whether all the employees at work on those two days qualified for a medical exemption, Councillor VanLeeuwen replied that he believed he was not entitled to ask them for proof. Indeed, the orders in effect at the time of the July 2020 and January 2021 inspection stated, "owners and operators shall not

[26] As Medical Officer of Health for Wellington-Dufferin-Guelph, Dr. Mercer issued the first order on face coverings on June 10, 2020. The order was updated June 12. Subsequent, superseding orders were issued July 17, September 18, and March 15.

require employees or members of the public to provide proof that they qualify for any of the exemptions ..."[27] [28]

ANALYSIS AND FINDINGS

136. Findings of fact are based on the civil standard of the balance of probabilities.

The Claim that "Lockdowns Cause More Harm than the Virus"

137. In Ontario, while many municipalities adopted by-laws related to the pandemic, and medical officers of health issued orders under the *Health Protection and Promotion Act*, the most prominent and far-reaching restrictions were those made by the provincial Cabinet under the *Emergency Management and Civil Protection Act* and the *Reopening Ontario (A Flexible Response to COVID-19) Act.*

138. "Lockdown" is not a static concept. The Province did not adopt a single, consistent set of pandemic restrictions. Instead, the rules have continued to change. The Province's principal lockdown instrument, Ontario Regulation 82/20, developed through 72 versions between March 24, 2020, and June 23, 2021 – a different version of restrictions every six days on average.

139. The rules themselves never imposed universal restrictions or prohibitions – the restrictions were always subject to exceptions. For example, for a long period of time, stores selling groceries could also sell books and CDs, while large and small book retailers could not. At one point earlier this year, many construction projects were closed, but any construction project even partly funded by government was not. A business that washed and cut humans' hair needed to be shut, but a salon that shampooed and groomed pets could remain open. Decisions about what to lock down and what to exempt from the lockdown have always been policy choices of government.

140. At various times, the Ontario restrictions have included so-called stay-at-home orders.[29] As did other restrictions, the stay-at-home orders contained a variety of exemptions. One exemption permitted an individual to travel to a second residence provided the stay was less than 24 hours or more than 14 days.[30]

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[27] Dr. Nicola Mercer, Medical Officer of Health, Wellington-Dufferin-Guelph, Section 22 Class Order, issued and effective July 17, 2020.

[28] Wellington-Dufferin-Guelph Public Health, "Face Coverings" (updated November 6, 2020).

[29] O. Reg. 11/21, O. Reg. 265/21.

[30] O. Reg. 11/21, Schedule 1, subs. 1(1), para. 19.

141. In Ontario, a lockdown is a bundle of shifting government policy choices, including restrictions and exemptions, based on input from lobbyists as well as public health experts.[31]

142. Not only did the design of lockdowns and lockdown exemptions reflect government policy choices, but the prioritization of lockdowns over other strategies (e.g., paid sick days, speedier vaccine procurement, widespread asymptomatic testing, prohibiting flights from global hotspots) also reflected provincial and federal government policy choices since the pandemic began.

143. In this context, labelling people as either "for" or "against" "lockdowns" is overly simplistic. There have been, and are, differing opinions among different Ontarians about the choices that governments have made. Some Ontarians agreed and some Ontarians disagreed with the prioritization of certain policy options over other policy options. Some Ontarians believed there were too many exemptions. Some Ontarians believed there were too few. Some Ontarians believed the exemptions were random or unfair. Some Ontarians believed the exemptions were influenced too much by lobbying and not enough by science.[32]

144. Given that the Province modified its own restrictions 71 times after first introducing them, clearly it was not unreasonable for Councillor VanLeeuwen and the Caucus to question the merits, and to critique the content, of the rules. Even the Province could not settle on the content of its lockdown measures, so it is unfair to fault Councillor VanLeeuwen, or anyone, for being dissatisfied with one or more particular versions. If Ontario Regulation 82/20 were sacrosanct, then it would not have been amended on a weekly basis on average.

145. I am mindful of Dr. Nicola Mercer's observation that Councillor VanLeeuwen and the Caucus opposed all lockdown measures, not just particular versions, and were criticizing public health measures without offering solutions. I accept her expert assessment that criticism without alternatives is no way to develop public health policy. The issue under the Code, however, is not whether Councillor VanLeeuwen offered a comprehensive policy position; the issue is whether he violated the standards of ethical conduct. Criticism of policy, without offering an alternative, is not unethical, and is not contrary to the Code.

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[31] The Province's lobbyist registry reveals the extent of lobbying on the Government's COVID decision-making: https://lobbyist.oico.on.ca/Pages/Public/PublicSearch/

[32] Ontario, Legislative Assembly, Official Report of Debates (Hansard), 1st Session, 42nd Parliament, No. 212A (November 24, 2020), p. 10677, quoting Catherine Fife, MPP, online: https://www.ola.org/sites/default/files/node-files/hansard/document/pdf/2020/2020-11/24-NOV-2020_L212A.pdf

146. Nobody who provided evidence in the inquiry disputes the existence of adverse effects of provincial lockdown measures.[33] Economic impacts include lost jobs and closed businesses. Non-economic impacts identified by Public Health Ontario are listed at paragraph 90. Premier Ford has called these outcomes "a massive cost to people and their lives." The issue is not whether adverse effects exist, but whether Councillor VanLeeuwen violated the Code when he said these adverse effects of the provincial lockdown measures exceed the harm caused by COVID.

147. I expressly asked the Province whether the claim of the End the Lockdowns National Caucus – that the lockdowns cause more harm than the virus – is factually incorrect, and I invited the Province to provide information to that effect. The provincial government, which has enacted most of the lockdown rules, has not measured the impacts of its lockdown restrictions, whether economic or non-economic. Consequently, even the Province is unable to establish that "the lockdowns cause more harm than the virus" is a false statement.

148. The Government provided extensive information on steps being taken to address adverse effects of lockdown measures, but those steps do not address the issue in this inquiry, namely, whether the adverse effects are measurable and have been measured in a way that allows me to conclude the Councillor VanLeeuwen's statement is false.

149. I have no doubt that Province of Ontario decision makers were sincere in believing that their lockdown measures mitigated COVID harms that would have been worse than effects of the measures. By the Government's own admission, however, the effects of the measures are unquantified. As the Province stated to this inquiry:

> As mentioned above, Ontario does not have an analysis of the economic impacts that can be specifically traced to COVID-19 restrictions. Other, non-economic, impacts on the citizens of Ontario may not be possible to quantify precisely. This, however, does not make any of these impacts less factual or real.

150. Since the impacts are unmeasured or unmeasurable, there is no evidentiary basis to prove or to disprove an assertion that "the lockdowns cause more harm than the virus."

151. According to the Government responses to my questions, the case for the provincial lockdown measures was modelling, and also the experience of other countries. Even if Councillor VanLeeuwen made a statement inconsistent with provincial modelling, inconsistency with modelling is not the same as a falsehood, and inconsistency with modelling does not breach the Code. Even if Councillor VanLeeuwen made a statement that was not based on the outcomes in other countries, failure to apply other countries' experiences is not the same as a falsehood in relation to Ontario and does not contravene the Code.

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[33] Some expert stakeholders, however, explained that the lockdown measures are not a root cause of the impacts. I consider their evidence at paragraphs 153 and 154.

152. Given the absence – an absence confirmed by the Province – of quantifiable measurement of adverse effects of the lockdowns, I find it impossible to treat "the lockdowns cause more harm than the virus" as a statement of fact. It is a statement of political opinion. In Canada we do not penalize elected representatives who hold political opinions, even political opinions out of step with the mainstream.

153. Before concluding this section of the report, I wish to address two additional points made by participants in this inquiry: first, the evidence of experts that lockdown measures are not the root causes of social impacts; second, the argument that it is incumbent on Councillor VanLeeuwen and the End the Lockdowns National Caucus to prove the accuracy of their assertion.

154. The expert stakeholders have made clear the lockdown measures are not the root cause of the non-economic harms experienced by Ontarians. While I accept their assessment, I cannot make assumptions about whether the statement of the End the Lockdowns National Caucus was referring to root cause, proximate cause, actual cause, or contributing cause. In any event, the fact remains that, by its own admission, the Province, which has introduced most of these measures, cannot quantify and has not quantified impacts. Consequently, it remains impossible to disprove the assertion that "the lockdowns cause more harm than the virus."

155. As for the question of where the onus lies, typically the burden of proof lies on the party alleging misconduct or non-compliance: *Bartscher v. Cardy*, 2018 ONMIC 28 (CanLII). Especially when contravention of the Code can result in a penalty, is not fair to make Councillor VanLeeuwen prove that he complied with the Code. In the absence of evidence that "lockdowns cause more harm than the virus" is false, no finding can be made against the Respondent.

The "Happy Balance"

156. I also find that the claim "lockdowns cause more harm than the virus" is based on a comparison the Government of Ontario itself invited.

157. Long before Councillor VanLeeuwen and the End the Lockdowns National Caucus issued their statement, Premier Ford was promoting the goal of a "happy balance" between public health and the economy.[34] As he explained in a Tweet, "I'm trying to navigate right down the middle; balancing Ontarians' health & the economy."[35]

158. By repeatedly stating that its goal was an equilibrium between public health and economic performance, the Province legitimized the comparison of public health impacts to economic impacts. However, as this inquiry has found, the Government was not

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[34] See notes 12, 13, 14.

[35] Twitter, @fordnation, October 27, 2020, 3:42 p.m., note 15.

actively measuring effects to determine whether that "happy balance" was achieved. If the Province could claim, without evidence, that it was pursuing balance, then it was equally open to the End the Lockdowns National Caucus to assert an imbalance (i.e., "lockdowns cause more harm than the virus.")

159. The Premier's "happy balance" messaging was political opinion. Denying that the Government had struck the right balance was also political opinion. Voicing this opinion did not contravene the Code of Conduct.

Lobbying, Polling and other Non-Public-Health Inputs

160. The criticism that Councillor VanLeeuwen and the End the Lockdowns National Caucus are "against public health" is a common political talking point, but an Integrity Commissioner may only find a Code of Conduct contravention based on facts, not talking points or tropes.

161. I find, and the Government has acknowledged, that public health considerations were not the only inputs into decision-making on the lockdown. In other words, the Province introduced factors other than public health into the design of its pandemic restrictions. Consequently, it cannot have been inappropriate for Councillor VanLeeuwen, or anyone, to advance arguments based on non-public health factors (like the economy).

162. Last month, a special series by the *Toronto Star* detailed the extent of lobbying on Ontario's pandemic restrictions. According to the news reports, sometimes lobbying prevailed over public health advice.[36]

163. When I asked it about the impact of lobbying, the Province stated, "As with all public decisions, Ontario has welcomed input from a wide variety of stakeholders."

164. Polling is another factor in decision-making. Multiple news reports indicate that more stringent lockdown restrictions are based on public opinion.[37] [38] [39]

165. Asked whether political considerations, and not just public health factors, have been taken into account in fashioning the pandemic restrictions, the Province told the

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[36] Richard Warnica and Andrew Bailey, *Toronto Star*, "Several of Doug Ford's key pandemic decisions were swayed by business interests, Star analysis suggests" (July 15, 2021).

[37] Mike Crawley, CBC News, "The inside story of Doug Ford's COVID-19 climbdowns" (April 22, 2021), online: https://www.cbc.ca/news/canada/toronto/covid-19-ontario-doug-ford-cabinet-police-playgrounds-1.5997381

[38] Robert Benzie, *Toronto Star*, "Insiders say Doug Ford is looking to dump lockdown critics as he shuffles cabinet that's 'too white and too male'" (May 31, 2021), online: https://www.toronto.com/news-story/10406037-insiders-say-doug-ford-is-looking-to-dump-lockdown-critics-as-he-shuffles-cabinet-that-s-too-white-and-too-male-/

[39] Robert Benzie, *Toronto Star*, "Poll suggests Ontarians blame Ottawa for COVID-19 vaccine shortages" (February 1, 2021)

inquiry that “the government has considered a wide variety of perspectives in its response to COVID-19.” It also stated that, “Ministers do hear from and consider the range of perspectives of constituents and stakeholders.”

166. At the same time, the Government maintains that, “the health of the citizens of Ontario has been and remains the primary concern.”

167. Nonetheless, the contribution of non-public-health inputs to provincial decision-making is relevant to whether Councillor VanLeeuwen has contravened the Code. It cannot be said that public health advice, and solely public health advice, has determined the lockdown measures. Contrary to what some have suggested, this is not a case of Councillor VanLeeuwen and the Caucus disregarding public health. Lobbying, opinion polling, political considerations, constituent communication, and stakeholder feedback were all part of the decision-making mix – as they would be in any other policy decision of government.

168. To be clear, a government is entitled let lobbying, or polling, or politics, influence its policy development. When that occurs, however, the policy cannot be characterized as entirely a public health decision. Those who exercise the right of dissent cannot arbitrarily be labelled as opposed to policy health. Being labelled as such does not mean contravening the Code of Conduct

Hear the Other Side

169. Fundamentally, this case is about dissent from decisions of the provincial government.

170. As I have found, provincial decisions on lockdown measures are not based solely on the advice of public health experts and other medical experts. They reflect a variety of inputs, including medical-scientific expertise, public opinion polling, political considerations, and lobbying by lobbyists. Premier Ford said as much when he explained that in fashioning restrictions the Government was seeking a “happy balance.” Ultimately, the lockdown measures are subjective policy choices made by provincial politicians. In Canada we do not treat political decisions as inviolate, objective truths that cannot be criticized.

171. Almost never is there only one policy solution to a given problem. The fact that Ontario adopted 72 different versions of lockdown measures is ample evidence that there was more than one way to respond to the pandemic, and I find that the Code of Conduct must be interpreted in light of that reality. The Cabinet clearly was choosing from a range of options, and there is no basis to find that a politician who advocates an unchosen option should be penalized, or, to use a modern expression, cancelled. A municipal

representative who happens to disagree with the subjective policy choice of provincial politicians does not contravene the Code of Conduct.

172. The Code of Conduct was adopted by Council under the *Municipal Act*, a statute of Ontario. In this Province, as across the entire country, our political system presumes that on any question there are different, legitimate positions. As examples, I note the constitutional role of the Official Opposition, and the Legislative Assembly's motto, *audi alteram partem* (hear the other side). I am confident that the *Municipal Act* authority to create codes of conduct was never meant to outlaw disagreement with decisions of the provincial Cabinet.

173. One of Councillor VanLeeuwen's arguments is that he felt compelled to take a stand because provincial and federal elected representatives were unable to express alternative viewpoints.

174. For the record, the response of the Government of Ontario to my inquiry on this point was as follows:

> In a free and democratic society like Ontario, the government values public debate on its policies. Ontario rejects the characterization that it has discouraged public debate on the shape of its pandemic response or the specifics of the COVID-19 regulations. [emphasis added]

175. Despite this assertion, the facts align with Councillor VanLeeuwen's explanation that he was giving expression to views that the Government is trying to suppress at Queen's Park. York Centre MPP Roman Baber was removed from the governing party's legislative caucus and the Government attempted to reduce his legislative salary after he expressed opinions similar to those of Councillor VanLeeuwen.[40] Subsequently, four Ministers who had "all been outspoken over the impact of lockdowns on the economy and on mental health"[41] were removed from the Cabinet.[42] (According to its own responses in this inquiry, the Government has not measured the impact of its lockdown restrictions.)

176. While Councillor VanLeeuwen is voicing an opinion, quite possibly a minority opinion, that is not fully expressed at other levels of government, that fact does not affect the determination of whether the Code of Conduct was contravened.

177. I have also considered the argument that Councillor VanLeeuwen and the End the Lockdowns National Caucus have been spreading misinformation and not merely opinion.

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[40] See paragraphs 203, 204, 205, 235, and 236.

[41] Robert Benzie, *Toronto Star*, "Insiders say Doug Ford is looking to dump lockdown critics as he shuffles cabinet that's 'too white and too male'" (May 31, 2021), online: https://www.thestar.com/politics/provincial/2021/05/31/insiders-say-doug-ford-is-looking-to-dump-lockdown-critics-as-he-shuffles-cabinet-thats-too-white-and-too-male.html

[42] Robert Benzie and Rob Ferguson, *Toronto Star*, "Doug Ford dumps five ministers in cabinet shuffle" (June 18, 2021), online: https://www.thestar.com/politics/provincial/2021/06/18/doug-ford-dumps-five-minister-in-cabinet-shuffle.html

I have already found, however, that the Government has not measured impacts and cannot empirically disprove the claim that "the lockdowns cause more harm than the virus." I am also mindful of the unfairness of labelling opinion as fact. The Supreme Court of Canada has cautioned that it is very difficult to separate fact from opinion: the difference is "vague" and "elusive."[43]

178. The Supreme Court of Canada has also stressed the importance of protecting the expression of beliefs that are out of step with the majority's view – even beliefs that the majority considers to be false. In a decision written by Justice Beverley McLachlin (before she became Chief Justice), the Court outlined as follows the purpose of *Charter* protection of freedom of expression:

> The purpose of the guarantee is to permit free expression to the end of promoting truth, political or social participation, and self-fulfilment. That purpose extends to the protection of minority beliefs which the majority regard as wrong or false: *Irwin Toy*, *supra*, at p. 968. Tests of free expression frequently involve a contest between the majoritarian view of what is true or right and an unpopular minority view. …Thus the guarantee of freedom of expression serves to protect the right of the minority to express its view, however unpopular it may be; adapted to this context, it serves to preclude the majority's perception of 'truth' or 'public interest' from smothering the minority's perception.[44]

179. The Code of Conduct should be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms*, including the right of freedom of expression. As the Supreme Court of Canada has ruled, the majority's view of what is true or in the public interest cannot smother the minority's alternate perception.

180. Once political decision-making leads to the enactment of a law, that law should be obeyed. One may challenge a law by constitutional, legal process. One may seek to alter a law through the democratic, political process. An elected representative should not, however, advocate law breaking. I find that Councillor VanLeeuwen did not urge anyone to break the law. His actions were limited to seeking to overturn the lockdown measures through constitutional, legal, democratic, and political processes.

The Constitution and the Rule of Law

181. Indeed, Councillor VanLeeuwen's position is partly based on constitutional principles. The statement of Councillor VanLeeuwen and the End the Lockdowns National Caucus makes reference to "safeguarding our representative democracy and its institutions, [and] defending our Constitution, personal freedoms and responsibilities …"

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[43] *R. v. Zundel*, [1992] 2 S.C.R. 731, at 749-751.

[44] *R. v. Zundel*, at 752-753.

182. A municipal councillor is entitled to defend democracy and the Constitution. Doing so is not a contravention of the Code of Conduct.

183. Councillor VanLeeuwen asserts that subsequent events confirm the importance and reasonableness of his decision to speak out on constitutional rights. I agree.

184. This inquiry is not a review of the OPP. The examination relates to Councillor VanLeeuwen. The activity of the OPP is relevant only to the extent that is has been raised as an explanation or justification for the Council Member's conduct.

185. On April 16, Premier Doug Ford and several Cabinet Ministers announced yet another iteration of provincial policy measures. They stated that, effective April 17:

> Police officers and other provincial offences officers will have the authority to require any individual to provide their home address and purpose for not being at their residence. In addition, police officers, special constables and First Nation Constables will have the authority to stop vehicles to inquire about an individual's reasons for leaving their home.[45]

186. The Premier and Ministers also announced the closure of, "all outdoor recreational amenities, such as golf courses, basketball courts, soccer fields, and playgrounds with limited exceptions."[46]

187. The @OPP_News Twitter account describes itself as the, "Official account of Ontario Provincial Police." On April 16, the OPP issued two Tweets, claiming that laws were in place before they had even been made.

188. One Tweet, issued at 6:09 p.m., claimed, "Law enforcement now has the ability to ask anyone outside their residence, including motorists, to indicate their purpose for leaving home and provide their address."

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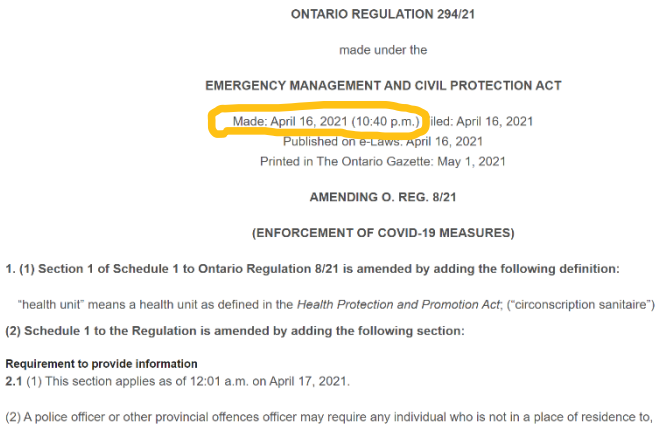
45 Office of the Premier, "Ontario Strengthens Enforcement of Stay-at-Home Order" (April 16, 2021), online: https://news.ontario.ca/en/release/61192/ontario-strengthens-enforcement-of-stay-at-home-order

46 *Ibid.*

189. In fact, at 6:09 p.m., April 16, this was not the case. For one thing, the law would not take effect until 12:01 a.m., April 17. More significantly, at 6:09 p.m., the law did not exist. The Order in Council was not signed until 10:40 p.m. Only then was the new regulation made.



ONTARIO REGULATION 294/21

made under the

EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

Made: April 16, 2021 (10:40 p.m.) Filed: April 16, 2021
Published on e-Laws: April 16, 2021
Printed in The Ontario Gazette: May 1, 2021

AMENDING O. REG. 8/21

(ENFORCEMENT OF COVID-19 MEASURES)

1. (1) Section 1 of Schedule 1 to Ontario Regulation 8/21 is amended by adding the following definition:

"health unit" means a health unit as defined in the *Health Protection and Promotion Act*; ("circonscription sanitaire")

(2) Schedule 1 to the Regulation is amended by adding the following section:

Requirement to provide information

2.1 (1) This section applies as of 12:01 a.m. on April 17, 2021.

(2) A police officer or other provincial offences officer may require any individual who is not in a place of residence to,

190. In other words, the OPP was claiming on Twitter that the police "now" possessed new powers, several hours before the powers, Ontario Regulation 294/21, had even been signed into law.

191. This occurred not once, but twice. A second 6:09 p.m. Tweet claimed: "OPP will be enforcing new measures to limit transmission of COVID-19 virus and variants. Strict measures at provincial borders and limitations on outdoor recreational activity."

192. At 6:09 p.m., the border measures existed but the limitations on outdoor recreational activity did not. The former, Ontario Regulation 293/21, had been signed at 3:00 p.m. The latter order, Ontario Regulation 297/21, was not signed until late at night. This means the OPP announced that it would be enforcing new limitations on outdoor recreational activity, several hours before those limitations were law.

193. According to Councillor VanLeeuwen, this incident demonstrates why it was reasonable for him and the End the Lockdowns National Caucus to express concern about "safeguarding our representative democracy and its institutions."

194. I gave the OPP – not the Wellington County Detachment, but the provincial Commissioner himself – written notice that I was considering this issue,[47] and offered an opportunity to address it.

195. The Commissioner of the OPP responded to me, in writing, as follows:

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[47] In particular, I invited the OPP to address the submissions, "that a police announcement of powers that do not exist, under laws that do not exist, gives rise to a legitimate public concern, including a concern about respect for the rule of law; and that the police should be able to distinguish a news conference or news release from an actual law."

> I note this relates to two tweets issued by the OPP Corporate account shortly after the Ontario government's news conference announcing amendments to emergency order O.Reg 8/21 Enforcement ofCOVID-19 Measures. Specifically the statements made at the press conference included the following:
>
> > "To increase public compliance with the Stay-at-Home order and stop the spread of COVID-19, amendments to an emergency order (O.Reg 8/21 Enforcement of COVID-19 Measures) **have been made** that will provide police officers and other provincial offences officers enhanced authority to support the enforcement of Ontario's Stay-at-Home order. Effective Saturday, April 17, 2021 at 12:01 a.m., police officers and other provincial offences officers will have the authority to require any individual to provide their home address and purpose for not being at their residence. In addition, police officers, special constables and First Nation Constables will have the authority to stop vehicles to inquire about an individual's reasons for leaving their home."
>
> The OPP relied on the information in the government's news release when publishing its subsequent tweets, and linked to that release in its tweets.
>
> While the information in the tweets was communicated based on our understanding at the time, it is important to note that our enforcement approach did not change based on the announcement.

196. At the time of the Tweets, the measures in question were not laws; they were merely policy proposals of the governing party. The provincial police force was claiming new powers and announcing the enforcement of new restrictions based on what amounted to, at the time, political positions of the governing party, and not actual law.

197. In the Ontario constitutional order, news conferences and news releases are not part of the law-making process. Cabinet orders are made by instruments signed by the Lieutenant Governor. Words spoken by a politician at a press conference have no legislative effect. Words spoken by a politician are certainly not authority for police action.

198. The rule of law requires that the police be able to distinguish political pronouncements and news releases from duly-enacted laws.

199. I agree with Councillor VanLeeuwen that the events of April 16 demonstrate the reasonableness and the propriety of his statements about protecting democratic institutions and upholding the constitutional order, including the rule of law. Defending the Constitution and the rule of law is not contrary to the Code of Conduct.

Deputy Mayor VanLeeuwen's Social Media Posts

200. Because Deputy Mayor VanLeeuwen's Facebook posts were mentioned in the Mayor's February 16 report to Committee of the Whole, I have examined each of them. I find that the posts constituted fair commentary and were not misleading. With a few exceptions, the factual claims in Councillor VanLeeuwen's social media posts were

accurate. The statements of opinion in his social media posts reflected views that he had a right to express, and they did not contravene the Code.

201. On September 17, Mr. VanLeeuwen posted on Facebook a Tweet of independent MPP Randy Hillier, in which Mr. Hillier shared a Tweet sharing another Tweet that said the Province had decided on new restrictions to take effect Thanksgiving weekend. Mr. Hillier commented, "This is consistent with what I've been hearing." The prediction proved to be correct, as new restrictions were imposed on Toronto, Ottawa, and Peel Region effective October 10, and on York Region effective October 19.

202. On November 29, Mr. VanLeeuwen reposted another Facebook user's post stating that Alberta Premier Jason Kenney had acknowledged "a grave mistake" in the provincial pandemic response. The claim was accurate; Premier Kenney had used those exact words on November 24.[48]

203. On January 15, Deputy Mayor VanLeeuwen reposted the open letter of Progressive Conservative MPP Roman Baber. (Mr. Baber was immediately expelled from the PC caucus for writing the letter.) The Baber letter contained 39 specific statements of fact; the Ontario Ministry of Health issued a fact-sheet refuting six of the claims. Two of the six rebuttals related to Mr. Baber's misspelling of Princess Margaret Cancer Centre and his miscount of the number of Ontario hospitals. A third rebuttal clarified that overdose deaths were only up 38 per cent, and not 50 per cent.

204. On May 21, the preliminary overdose statistics that the Ministry used to debunk Mr. Baber's claim were updated. The corrected figures confirm Mr. Baber's statement and in fact, are worse. Mr. Baber had said overdoses were "trending" to a 50-per-cent increase. In fact, the year-over-year overdose increase was 60 per cent. The per month increase between February (last month before any restrictions) and December was 79 per cent.[49]

> The monthly number of opioid-related deaths has varied considerably over time in Ontario over the period studied. However, in the months following the State of Emergency declaration in Ontario on March 17, 2020, there was a significant acceleration in the number of opioid-related deaths observed across Ontario (p=0.0008). Specifically, there was a 79.2% increase in the number of opioid-related

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[48] "We need to acknowledge as we go through COVID when we have made mistakes. This government made, I think, a grave mistake in the spring when we made, frankly, a stupidly arbitrary distinction between essential and non-essential retail businesses that had the unintended consequence of allowing Walmarts and Costcos to sell darn near everything because they have a grocery section or they sell pharmaceuticals, while shutting down thousands and thousands of retail small and medium sized businesses": Hon. Jason Kenney, online, https://www.youtube.com/watch?v=ylTCTcSM09Y

[49] T. Gomes, R. Murray, G. Kolla, P. Leece, S. Bansal, J. Besharah, T. Cahill, T. Campbell, A. Fritz, C. Munro, L. Toner, J. Watford, "Changing Circumstances Surrounding Opioid-Related Deaths in Ontario during the COVID-19 Pandemic" (May 2021), p. 5, online: https://www.publichealthontario.ca/-/media/documents/c/2021/changing-circumstances-surrounding-opioid-related-deaths.pdf?sc_lang=en

> deaths between February 2020 (the month prior to the State of Emergency declaration; N=139 deaths) and December 2020 (N=249 deaths).
>
> Overall, in 2020, there were 2,426 opioid-related deaths, a 60.0% rise from 1,517 deaths the year prior. Among women, the monthly number of opioidrelated deaths increased 43.6% from February to December 2020 (39 vs. 56 deaths monthly), compared to a 93.0% increase among men (from 100 to 193 deaths monthly) over the same period. By age, the largest increases were observed among those aged 25 to 44 (61.4% increase from 83 to 134 deaths monthly) and 45 to 64 years (119.5% increase from 41 to 90 deaths monthly).

205. One of Mr. Baber's predictions was that, "The growth in number of Ontarians who died of overdose in 2020, may be higher than the number of people who died from COVID outside LTC." His prediction came close. In 2020, approximately 1259 COVID related deaths occurred outside of long-term care facilities and retirement homes,[50] [51] while opioid-related deaths rose 909 above the previous year.[52]

206. The material claims and predictions in Mr. Baber's letter were accurate. I find that it was not misleading for Councillor VanLeeuwen to post the correspondence.

207. On January 28, Mr. VanLeeuwen reposted the Facebook post of Councillor Neil Dunsmore, in which the latter described his "Steps to Stop the Silence" Elora-to-Ottawa walk, last fall, to raise awareness of mental health and to raise funds for the Cody Shepperd Project.

208. On February 4, Deputy Mayor VanLeeuwen posted a link to a Canadian Press news story, "'Kids are not all right': Mental health among Ontario children deteriorating."[53] This was an actual February 2 news report, written by veteran CP reporter/editor Liam Casey. He also posted a link to the January 20 article of *Globe and Mail* education reporter Caroline Alphonso, "'Shadow pandemic' of young people with eating disorders a challenge for health networks to treat."[54]

209. The same afternoon, Deputy Mayor VanLeeuwen posted on Facebook the announcement and group photograph of the End the Lockdowns National Caucus, discussed starting at paragraph 24.

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[50] Public Health Ontario, "COVID-19 Outbreaks and Cases in Ontario, by Setting: February 16, 2020 to December 26, 2020," Table 3, online: https://www.publichealthontario.ca/-/media/documents/ncov/epi/covid-19-settings-based-outbreaks-epi-summary.pdf?sc_lang=en

[51] Public Health Ontario, Ontario COVID-19 Data Tool (for December 31, 2020), online: https://www.publichealthontario.ca/en/data-and-analysis/infectious-disease/covid-19-data-surveillance/covid-19-data-tool?tab=summary

[52] "Changing Circumstances Surrounding Opioid-Related Deaths in Ontario during the COVID-19 Pandemic" (May 2021), note 49, p. 5.

[53] Online, https://toronto.ctvnews.ca/kids-are-not-all-right-mental-health-among-ontario-children-deteriorating-1.5292729

[54] Online, https://www.theglobeandmail.com/canada/article-shadow-pandemic-of-young-people-with-eating-disorders-strains-capacity

210. On February 5, Deputy Mayor VanLeeuwen posted a news story about a 24-hour spike in drug overdoses in Toronto. The news story was based on an actual statement issued by Toronto Public Health.[55]

211. On February 5, Deputy Mayor VanLeeuwen also posted, without comment, a meme of a 2010 quotation from Bill Gates. The Gates quotation was accurate.[56]

212. That afternoon, he posted on Facebook a link (https://www.change.org/p/justin-trudeau-i-support-end-the-lockdowns-caucus) to a Change.org petition of support for the End the Lockdowns National Caucus. That evening, he posted, without comment, a link to a video of independent Member of Parliament Derek Sloan.

213. On February 6, Deputy Mayor VanLeeuwen posted a meme claiming that the numbers of calls to the Kids Help Phone were 1.9 million in 2019 and 4.2 million in 2020. The figures are basically accurate, though understated. The figures include calls and texts, and the 2020 volume was 4.5 million.[57]

214. On February 6, he also posted a news story that accurately summarized the U.S. Supreme Court interim injunction decisions in *South Bay United Pentecostal Church v. Newsom* and *Harvest Rock Church v. Newsom*.

215. Another February 6 post shared a meme claiming that lawyer "Rocco Galati won the cause [*sic*] against forced immunization in Canada" and that forced vaccination is illegal under the Nuremburg Code. The meme indicates that it was translated from another language into English. The post was suppressed by Facebook as "False Information/Checked by independent fact checkers." The reference to the litigation being handled by Mr. Galati mistakes a lawsuit currently before the courts[58] with a final court judgment. Meanwhile, the Nuremburg Code (1947) is not law; it is a statement of ethics in the context of medical experiments, based on the principle of voluntary informed consent. While it is true that Dr. Mona Nemer, Chief Science Advisor of Canada, called the four-month delay between vaccine doses "a basically population level experiment,"[59] inoculation typically is not considered experimentation and is not considered subject to the ethical norms of the Nuremburg Code. Apart from the mistaken description of the case being argued by Mr. Galati (whether translation contributed to the mistake is

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55 Toronto Public Health, "High number of overdose calls to paramedics in past 24 hours" (January 30, 2021), online, https://www.toronto.ca/wp-content/uploads/2021/01/8d7f-Drug-Alert30Jan2021.pdf

56 Bill Gates, "Innovating to zero!" TED2010, 4:23 mark of online video: https://www.ted.com/talks/bill_gates_innovating_to_zero

57 Marsha McLeod and Ashley Okwuosa, TVO.org, "Kids in crisis: Inside Ontario's overloaded mental-health system," (May 6, 2021), online: https://www.tvo.org/article/kids-in-crisis-inside-ontarios-overloaded-mental-health-system

58 *Vaccine Choice Canada et al. v. Ontario*, Superior Court of Justice File No. CV-19-006298100000.

59 Peter Zimonjic, Vassy Kapelos, CBC News, "Canada's chief science adviser issues warning about B.C.'s 'experiment' with vaccine timing" (March 1, 2021), online: https://www.cbc.ca/news/politics/nemer-henry-vaccine-interval-experiment-1.5932714

unclear), I find that the post is merely an opinion about the application of informed consent to vaccinations.

216. On February 8, Mr. VanLeeuwen posted a news report on four new members of the Caucus: Dave Bylsma, Mayor, Township of West Lincoln; Paul Hinman, Leader, Wildrose Independence Party of Alberta; Jason Alderson, former Councillor, Town of Rocky Mountain House, Alberta; Glen Carrit, former Councillor, Town of Innisfail, Alberta.

217. On February 8, he posted a video that began with a clip in which Dr. Anthony Fauci stated that asymptomatic transmission had never been the driver of outbreaks of respiratory-borne viruses of any type, and included footage of a World Health Organization representative and other public health professionals who stated that asymptomatic persons did not need to wear masks. The video clips were authentic, but the content was dated. Dr. Fauci and the WHO had previously dismissed the likelihood of asymptomatic transmission, but later revised their positions and stated that COVID could, in fact, be transmitted by asymptomatic persons.[60] Mr. VanLeeuwen did not comment on the video or make a factual claim. Instead, he appears simply to have been drawing attention to previous statements of Dr. Fauci and WHO inconsistent with their later positions, shifts of position that actually occurred and were a fair subject of comment.

218. On another February 8 post by Deputy Mayor VanLeeuwen was a meme critical of PCR (polymerase chain reaction) tests of COVID. According to the post, "The positive PCR test used to support the assertion of rapid spread of COVID-19 has been shown to be faulty." According to Public Health Ontario, PCR is considered the "gold standard of testing for COVID-19," with high sensitivity and a low chance for error compared to other types of lab tests.[61] More specifically, Public Health Ontario has stated that the positive predictive value of PCR testing is dependent on prevalence:

> In general, the positive predictive value (PPV) of COVID-19 PCR assays is excellent among patients with high pretest probability, and approaches 100%. This was determined at PHO Laboratory, using viral sequencing of PCR-positive specimens, excluding those for which viral copy number was near the LOD of the assay.
>
> However, in the context of low prevalence when the virus is not circulating at a high level in the community, PPV drops significantly. For example, if the community prevalence of SARS-CoV-2 is 1%, with a test sensitivity of 80%, and specificity of 99%, the PPV of a positive test is only 44.7%. If prevalence increases to 5% or 10%, then the PPV increases significantly to 80.8% and 89.9%, respectively.[62]

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[60] Berkeley Lovelace Jr., CNBC, "Dr. Anthony Fauci says WHO's remark on asymptomatic coronavirus spread 'was not correct'" (June 10, 2020), online: https://www.cnbc.com/2020/06/10/dr-anthony-fauci-says-whos-remark-on-asymptomatic-coronavirus-spread-was-not-correct.html

[61] Public Health Ontario, "Explained: COVID-19 PCR Testing and Cycle Thresholds" (February 17, 2021), online: https://www.publichealthontario.ca/en/about/blog/2021/explained-covid19-pcr-testing-and-cycle-thresholds

[62] An Overview of Cycle Threshold Values and their Role in SARS-CoV-2 Real-Time PCR Test Interpretation, pp. 6-7.

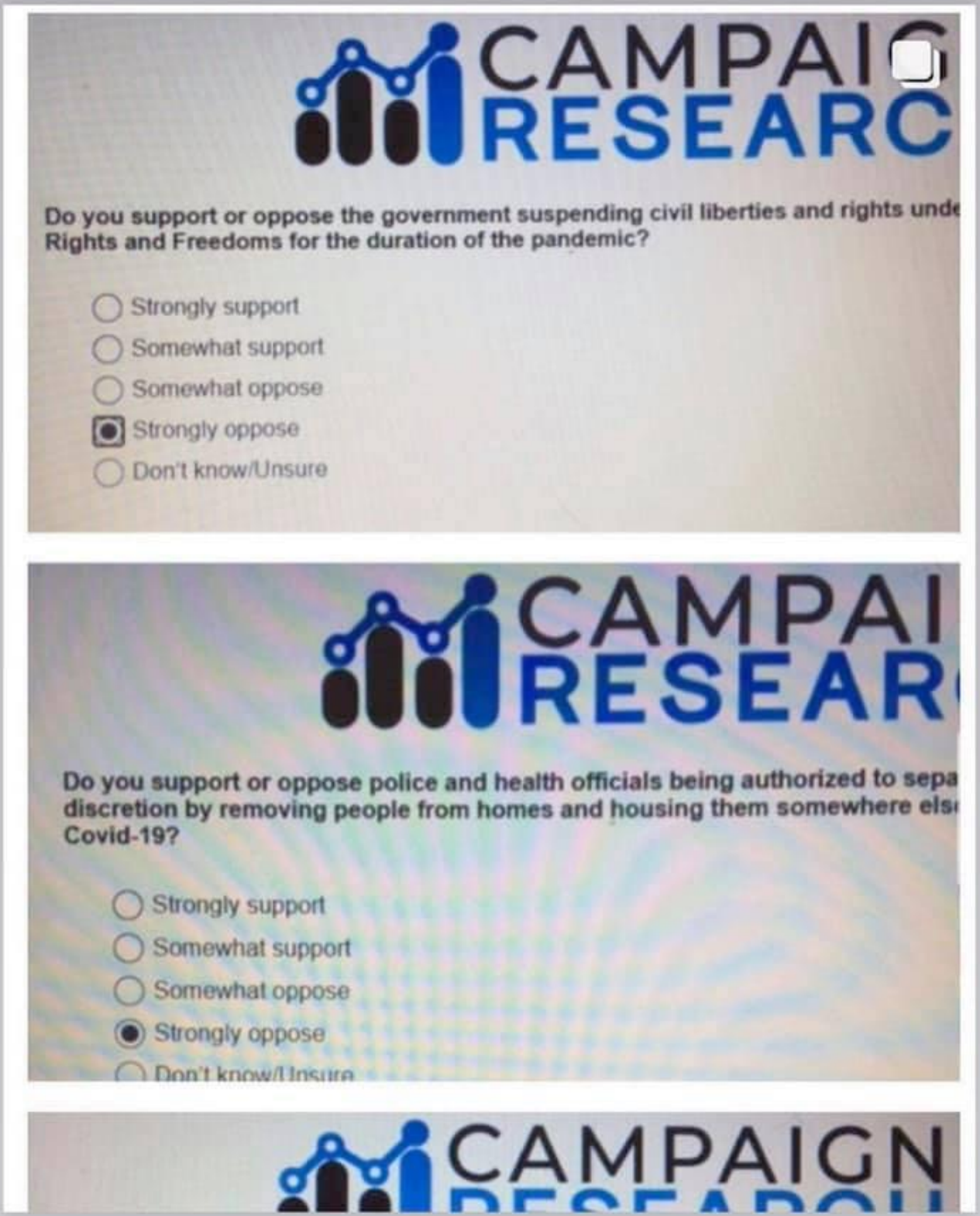
219. While the meme's claim seems inconsistent with Public Health Ontario statements about PCR testing, its accuracy depends on what the meme means by "faulty," including whether it contemplates lower positive predictive value in the context of low prevalence.

220. On February 9, Deputy Mayor VanLeeuwen reposted a post of Mr. Randy Hillier, MPP, that linked to the Facebook page of the group Police on Guard for Thee, and contained a statement by Mr. Hillier speaking positively of "all the great work Police on Guard for Thee is doing to help protect our constitutional rights during COVID." Whether pandemic response measures are or are not sufficiently respectful of rights under the *Canadian Charter of Rights and Freedoms* is a legitimate topic of debate in a free society, and I find that Mr. VanLeeuwen was entitled to express an opinion on the subject.

221. The same day, Deputy Mayor VanLeeuwen posted a link to a news story and an accompanying meme, both related to charges laid against Pastor Aaron Rock of Harvest Bible Church in Windsor. The facts contained in the post were accurate. The meme includes a photo of Pastor Rock beside the church's outdoor sign, reading, "If this was a big box store you could all come in. Unfair." The meme asked, "As liquor stores and Costco remain 'essential,' should places of worship be considered the same?" The factual content was accurate and the opinion – about provincial decision making on what is "essential" – was one that Mr. VanLeeuwen had every right to express.

222. On February 10 and February 11, Deputy Mayor VanLeeuwen posted links to news stories (including a Canadian Press story) about Alberta MLAs Drew Barnes and Angela Pitt joining the End the Lockdowns National Caucus. The links were to actual news stories with accurate content.

223. On February 10, Deputy Mayor VanLeeuwen posted a meme that purported to show online survey questions from a polling firm called Campaign Research. Portions of the questions were cut off; the text appearing on the meme read as follows: "Do you support or oppose the government suspending civil liberties and rights unde … Rights and Freedoms for the duration of the pandemic?" and "Do you support or oppose police and health officials being authorized to sepa … discretion by removing people from homes and housing them somewhere els … Covid-19?"



@mrinformation888

224. It is unknown whether the meme shows actual images from an online survey, but Campaign Research is a real polling firm that did conduct an actual national online survey from January 28-30, 2021, with questions that included the following: “Q11 - Do you support or oppose the government suspending civil liberties and rights under the Canadian Charter of Rights and Freedoms for the duration of the pandemic?” and “Q 7 – Do you support or oppose police and health officials being authorized to separate family members at their discretion by removing people from homes and housing them somewhere else to reduce or eliminate the risk of Covid spread?”[63]

225. On question 11 (suspending constitutional rights), Ontario respondents to the survey were divided as follows: 34% strongly opposed, 19% somewhat opposed, 25% somewhat supportive, and 9% strongly supportive. Most Ontario respondents were also opposed to letting authorities separate family members (question 7).[64]

226. Given the close correlation between the meme and a real online survey, I find that Mr. VanLeeuwen’s post was accurate and was fair commentary on an actual happening.

227. The Campaign Research survey also found that 30% of Ontario respondents wanted stronger pandemic restrictions. This group aligned with the view that, “My provincial government has done a bad job and I feel that we need the rules and restrictions to be more strict and they should have been put into place earlier. The new restrictions must stay in place for January and into February, at least.”[65]

228. The survey also canvassed a policy option that the Ontario Government would subsequently adopt. It asked: “Do you support or oppose police being authorized to establish pedestrian checkpoints to stop and question people outside of their homes to enforce compliance with Covid-19 restrictions?” This practice, informally known as “carding” (though not referred to as such in the survey), was strongly opposed by 36% of Ontario respondents and somewhat opposed by 23%, with 12% strongly supportive and 26% somewhat supportive.[66]

229. The evening of February 10, Deputy Mayor VanLeeuwen posted “Are Lockdowns Safe?” This meme contrasted the benefits of lockdowns (identified as reduced deaths among the vulnerable, and reduced stress on hospital ICUs) with the alleged consequences (41 were listed, including delayed surgeries and “governmental hypocrisy”). I find that the content of the meme is consistent with the position of the End the Lockdowns National Caucus, and have considered it as part of the analysis of Mr. VanLeeuwen’s Caucus participation.

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[63] Campaign Research, “National Omnibus Study - February 2021,” https://www.campaignresearch.com/single-post/national-omnibus-study-february-2021

[64] *Ibid.*

[65] *Ibid.*, Q2.

[66] *Ibid.*, Q6.

230. On February 11, Deputy Mayor VanLeeuwen posted a news story that quoted Dr. Adalsteinn Brown, co-chair of the Ontario COVID-19 Science Advisory Table, identifying a “very real risk” of a third wave and a third lockdown. The news story was accurate, and Dr. Brown’s prediction turned out to be correct.

231. On February 12, Deputy Mayor VanLeeuwen posted a collage consisting of the following: three CBC News headlines about church services and pandemic restrictions (two were related to charges and one was about a legal challenge); the text of subsection 176(1) of the *Criminal Code* (which deals with disturbing religious worship); and a statement that religion is protected under the *Charter* and enforcing measures to inhibit religious gatherings could contravene subsection 176(1) of the *Criminal Code.* I find that the news headlines were genuine, the statutory reference was accurate, and the remainder of the post constituted legal argument (that is, the assertion of a legal position), which is a permitted expression of opinion.

232. Also on February 12, Deputy Mayor VanLeeuwen posted a link to a Change.org petition to “Keep Steve VanLeeuwen as Deputy Mayor.”

233. On February 13, Deputy Mayor VanLeeuwen posted a *Globe and Mail* story headlined, “Melbourne, Australia begins third lockdown due to COVID-19 cluster.” This was a genuine news report of a real development.

234. On February 17, Deputy Mayor VanLeeuwen posted, without comment, a news story about the incarceration of Pastor James Coates of GraceLife Church of Edmonton. The news story described actual events.

235. On February 18, Deputy Mayor VanLeeuwen posted on Facebook the image of a Tweet, the previous day, of independent MPP Roman Baber. Mr. Baber was announcing a proposed law to reduce the pay of all Ontario MPPs to $500 per week (the amount paid under the Canada Emergency Response Benefit to individuals, including 400,000 Ontarians, whose employment was directly affected by COVID-19) until the pandemic restrictions that put people out of work were lifted. His argument was that if “we are all in this together” then provincial politicians should be wiling to bear the same economic consequences of the restrictions that they imposed on others.

236. After Mr. Baber introduced his bill, the Government House Leader, Paul Calandra, asked, “Speaker, I hope you’ll indulge me just a moment,” and introduced a motion that Mr. Baber’s pay, and his only, be reduced to the level of the Canada Emergency Response Benefit paid to Ontarians who are out-of-work because of provincial restrictions. Instead of ruling Mr. Calandra’s motion out of order, the Speaker, Wellington MPP Ted Arnott, allowed the motion and put it before the House; the motion passed.[67] I find that Deputy Mayor VanLeeuwen posted Mr. Baber’s Tweet, the day following these events, both to support Mr. Baber’s legislation and to show solidarity with Mr. Baber after the Government of Ontario secured passage of a motion to cut Mr. Baber’s pay.

237. On February 19, Deputy Mayor VanLeeuwen posted a meme claiming that the Toronto Police had experienced a 12-per-cent increase in mental-health-related calls since 2019. The factual claim was consistent with a *Globe and Mail* news report.[68]

238. In summary, the statements of opinion in his social media posts reflected views that he had a right to express and did not contravene the Code. With a few immaterial exceptions, the factual claims in Councillor VanLeeuwen’s social media posts were accurate.

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[67] Speaker Arnott subsequently decided that the motion of the House was insufficient to amend the legislation that sets MPPs’ salaries, but he never ruled the motion out of order. It remains on the books as a resolution of the Legislative Assembly, albeit of no force and effect: *Votes and Proceedings*, No. 222 (February 17, 2021), p. 4.

[68] Patrick White, Molly Hayes, *The Globe and Mail*, “Calls to police, physicians on mental-health matters surge during COVID-19 pandemic” (January 27, 2021).

Interference with Law Enforcement / Urging Law Breaking

239. I find, based on the available evidence, that Councillor VanLeeuwen did not obstruct, interfere with, or attempt to influence the enforcement of the lockdown measures or other public health measures.

240. I find no evidence that Councillor VanLeeuwen did or said anything to interfere with the independence of law enforcement.

241. I find no evidence that Councillor VanLeeuwen counselled anyone to break the law. His actions were limited to seeking to overturn the lockdown measures through constitutional, legal, democratic, and political processes.

242. As I have mentioned, I requested the cooperation of the Wellington County Detachment of the Ontario Provincial Police, and the request was declined. If the OPP possesses any information relevant to the findings in the preceding three paragraphs, then I am unaware of it.

243. Wellington-Dufferin-Guelph Public Health did assist with the inquiry. None of the information it provided indicates that Councillor VanLeeuwen interfered with law enforcement or urged people to break the law.

Private Interest

244. While Councillor VanLeeuwen actively defended freedom of religion, including the freedom of worship and religious observance, I do not find any evidence that he was using his position to advance a private interest, whether of the congregation to which he belongs or of any other individual or entity.

Compliance with the Law by Councillor VanLeeuwen

245. Finally, I have considered whether Councillor VanLeeuwen's personal compliance with the law (including his compliance as a business owner) is relevant to the Code of Conduct.

246. The short answer is that contraventions of provincial statutes are not within the jurisdiction of an Integrity Commissioner. Section 223.8 of the *Municipal Act* makes clear that alleged contraventions of Acts of the Legislature are the responsibility of "appropriate authorities."

247. The Code of Conduct does not prevail over section 223.8 of the *Municipal Act.*

248. Failure to comply with provincial lockdown restrictions would be an offence under the *Reopening Ontario Act* or the *Emergency Management and Civil Protection Act*.

Failure to comply with an order of the medical officer of health would be an offence under the *Health Protection and Promotion Act*. Each of these is a matter that section 223.8 of the *Municipal Act* excludes from Integrity Commissioner jurisdiction.

249. Whether Councillor VanLeeuwen and his businesses complied with applicable laws is a matter for local authorities, including police and public health officials. I note that WDG Public Health inspectors visited his business establishment on two occasions and did not lay charges.

250. I have also considered the undated photograph that shows Councillor VanLeeuwen standing beside other members of the End the Lockdowns National Caucus.

251. Councillor VanLeeuwen has commented on the recent photographs of Prime Minister Trudeau and other G7 leaders. The leaders made a point of posing for a staged, physically-distanced portrait, but then were observed (and photographed) mingling maskless and standing next to one another at a social event.

252. I agree with Councillor VanLeeuwen that the disingenuous conduct of the G7 leaders contrasts with the transparency of the End the Lockdowns National Caucus. Councillor VanLeeuwen has not embraced one position in public and practised another privately. However, I cannot make a Code of Conduct finding on that basis.

253. Because federal and provincial leaders are not subject to municipal integrity commissioner inquiries, I cannot make a finding on Councillor VanLeeuwen's observation that is unfair to penalize honest opposition to pandemic restrictions when those who make and promote the restrictions contravene them with impunity.

254. Instead, I find that section 223.8 of the *Municipal Act* governs the situation. If the photograph of the End the Lockdowns National Caucus is evidence of an offence, then it was (and, I believe, still is) open to law enforcement authorities to act on it. An Integrity Commissioner is not permitted to investigate alleged breaches of provincial legislation, except, in certain circumstances, the *Municipal Conflict of Interest Act*.

CONCLUSIONS

255. I conclude that Councillor VanLeeuwen's membership and participation in the End the Lockdowns National Caucus do not contravene the Code of Conduct.

256. I conclude that Councillor VanLeeuwen's social media activity prior to his removal from the position of Deputy Mayor did not Contravene the Code of Conduct.

257. I conclude that Councillor VanLeeuwen did not otherwise contravene the Code of Conduct.

CONTENT

258. Subsection 223.6(2) of the *Municipal Act* states that I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

Respectfully submitted,

Guy Giorno
Integrity Commissioner
Township of Centre Wellington

August 24, 2021